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TITLE 7—AGRICULTURE

Chapter III—Bureau of Entomology and Plant Quarantine, Department of Agriculture

[Quarantine No. 75]

PART 301—DOMESTIC QUARANTINE NOTICES

HAWAIIAN CITRUS NURSERY STOCK QUARANTINE

Introductory note. This quarantine is issued for the purpose of preventing the spread of the citrus canker disease from Hawaii, where it has been found to occur, to the mainland of the United States. Protection from entry of this disease from foreign countries where it occurs is afforded in notice of quarantine No. 19, revised, which prohibits the importation from all foreign countries and localities of all plants or any part thereof, except seeds and fruit, of all genera, species, and varieties of the rutaceous subfamilies Aurantioideae, Rutoideae, and Toddalioideae. The following quarantine similarly proscribes the movement in domestic commerce of this same host material from Hawaii to the mainland.

Transportation, shipment, or movement of fruits of these genera, species, and varieties will continue to be governed by 7 CFR 301.13.

Notice of determination of the Secretary of Agriculture. Information available to the Secretary of Agriculture and presented at a public hearing on December 6, 1946, shows that a dangerous plant disease, known as "citrus canker," occurs in Hawaii. This disease may be spread through the movement of citrus plant material. To prevent the introduction of this disease and other citrus diseases into the United States from foreign countries where they occur, Notice of Quarantine No. 19, revised, prohibits the importation of all plants or any part thereof, except fruit and seeds, of all genera, species, and varieties of the rutaceous subfamilies Aurantioideae, Rutoideae, and Toddalioideae from foreign countries and localities. In order to afford the citrus industry of the continental United States similar protection from spread of the disease from the Territory of Hawaii, the Secretary of Agriculture has determined that it is necessary to quarantine that Territory and to prescribe that the above-mentioned plant material shall not be moved therefrom to any other State or Territory or District of the United States.

§ 301.75 *Notice of quarantine.* (a) The Secretary of Agriculture, having given the public hearing required by law, quarantines the Territory of Hawaii in order to prevent the spread therefrom of a dangerous plant disease known as citrus canker (Xanthomonas citri (Hasse) Dowson), and other citrus diseases not now known to be widely prevalent or distributed within and throughout the United States.

(b) Hereafter plants or any plant part, except fruits and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae shall not be shipped, offered for shipment to a common carrier, transported, carried, moved, or allowed to be moved from the Territory of Hawaii into or through any other State or Territory or District of the United States in any manner or by any method, except that this quarantine shall not apply to shipments for experimental or scientific purposes by the United States Department of Agriculture upon such conditions and under such requirements as may be prescribed by the Chief of Bureau of Entomology and Plant Quarantine for such shipments.

(c) This quarantine shall be effective on and after September 15, 1947. (Sec. 8, 37 Stat. 318, 39 Stat. 1165, 44 Stat. 250; 7 U. S. C. 161)

Done at the city of Washington this 15th day of August 1947.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] N. E. DODD,
Acting Secretary of Agriculture.

[F. R. Doc. 47-7818; Filed, Aug. 20, 1947; 9:14 a. m.]

[Quarantine No. 19]

PART 319—FOREIGN QUARANTINE NOTICES

CITRUS NURSERY STOCK QUARANTINE

Introductory note. This revision of the citrus nursery stock quarantine is for

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the purpose of preventing the entry into the United States of plants of the botanical family Rutaceae that have been found susceptible to attack by citrus canker. Under its provisions the following prohibitions with reference to imports into the continental United States, Puerto Rico, and Hawaii are established:

Importation prohibited of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae,

From Europe, Asia, Africa, South America, Central America, North America outside of the United States, Australia, and foreign oceanic countries and islands.

Seeds of prohibited plants may be imported as heretofore under the provisions of Nursery Stock, Plant and Seed Quarantine, No. 37 (7 CFR 319.37). Fruits are prohibited entry under the provisions of Citrus Fruit Quarantine (7 CFR 319.28).

Notice of determination of the Secretary of Agriculture. Information available to the Secretary of Agriculture, and presented on December 5, 1946, at a public hearing, as required by law, discloses that plants of the rutaceous subfamilies Rutoideae and Toddalioideae, as well as those of all genera, species and varieties of the subfamily Aurantioideae, some of which were included in previous revisions of this quarantine, are susceptible to attack by citrus canker, and also other citrus diseases. It has been determined therefore that it is necessary further to revise the citrus nursery stock quarantine to prohibit the entry into the continental United States, Puerto Rico, and Hawaii of these additional genera of plants that have been found to serve as hosts of citrus canker. The quarantine is therefore revised to read as follows:

§ 319.19 *Notice of quarantine.* (a) The Secretary of Agriculture, having given the public hearing required by law, declares that it is necessary, in order to prevent the introduction into the United States of the citrus canker disease (Xanthomonas citri (Hasse) Dowson), and also other citrus diseases, all of which are new to and not heretofore widely prevalent or distributed within and throughout the United States, to forbid the importation into the continental United States, Puerto Rico, and Hawaii of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae and Teddalioideae of the botanical family Rutaceae, from Europe, Asia, Africa, South America, Central America, North America outside of the United States, Australia, and foreign oceanic countries and islands.

(b) Hereafter the importation from the foreign countries and localities named of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, is prohibited.

(c) This prohibition shall not apply to importations for experimental or scientific purposes by the United States Department of Agriculture upon such conditions and under such requirements as may be prescribed by the Chief of Bureau of Entomology and Plant Quarantine, for such importations.

(d) This revision of the quarantine shall be effective on and after September 15, 1947, and shall supersede the quarantine revision issued August 17, 1934. (Sec. 7, 37 Stat. 317; 7 U. S. C. 160)

REFERENCE: Subpart entitled "Citrus canker and other citrus diseases" of Part 319, Chapter III, Title 7, Code of Federal Regulations.

Done at the city of Washington this 15th day of August 1947.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] N. E. DODD,
Acting Secretary of Agriculture.

[F. R. Doc. 47-7816; Filed, Aug. 20, 1947; 9:14 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

PART 61—SCHEDULED AIR CARRIER RULES

AIRMEN UTILIZATION AND AIRMEN RECORDS

The following interpretation and statements of policy relating to §§ 61.50 and 61.500 of the Civil Air Regulations (12 F. R. 3171) were issued by the Administrator of Civil Aeronautics on August 1, 1947:

§ 61.50 *Airmen utilization.*

(CAA Interpretation)

A "flight crew member" is defined as "a pilot, flight radio operator, flight engineer, or flight navigator assigned to duty on the aircraft." (Civil Air Regulation 41.99 (i)).

§61.500 *Airmen records.*

(CAA Statements of Policy)

(a) The following information must be maintained accurately and currently in the airmen records: (1) Name (full); (2) Current duties and date of assignment (First Pilot, Flight Engineer, etc.); (3) Airman Certificates (type, certificate number, and ratings); (4) Date, result, and class of last physical examination of all flight crew members; (5) Date and result of last six months' instrument competency flight check for first pilots; (6) Routes over which dispatchers and applicable flight crew members are currently qualified, together with qualification records, grades, and dates; (7) Record of first pilot's flight time, including instrument flight time and flight time in the make and model of aircraft on which he is currently qualified; (8) Record of company training for all pilots, including actual flight, synthetic flight, and maintenance of proficiency training; (9) Any check pilot authorization (CAR 61.534); and (10) Any information on the individual considered desirable in these records by the air carrier as to special qualifications, duty assignment, etc.

(b) These records must (1) be available at any time for reference and inspection by authorized representatives of the Administrator of Civil Aeronautics, for the determination of compliance with appropriate qualifications and requirements prescribed in the Civil Air Regulations, (2) indicate the disposition of any dispatcher or flight crew member who is released from the employ of the air carrier, or who becomes physically or professionally disqualified, and (3) be retained by the company for at least six months.

(52 Stat. 977-1030; 49 U. S. C. 401-481, 485; sec. 7, Reorganization Plan No. III, approved April 3, 1939; sec. 7 (c), Reorganization Plan No. IV, approved April 3, 1939; 54 Stat. 1233, 1236; Letter of the Director of the Bureau of the Budget construing Reorganization Plans Nos. III and IV, dated May 2, 1940)

Issued this 1st day of August 1947.

F. B. LEE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 47-7799; Filed, Aug. 20, 1947; 9:13 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 5097]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

DECKER PRODUCTS CO.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product or service.* In connection with the offering for sale, sale, and distribution in commerce, of respondents' mechanical device designated "Vacudex", or any substantially similar device, whether sold under the same name or any other name, representing, directly or by implication, that said device or any substantially similar device will (1) eliminate or reduce back pressure; (2) save gasoline or oil; (3) increase the power of the motor or cause it to give better performance; (4) draw carbon, oil, or moisture from the muffler; (5) reduce the vibration of the motor; (6) give the motor greater acceleration or cause it to run more smoothly or more quietly; or (7) save tires; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U. S. C., sec. 45b) [Cease and desist order, Decker Products Company, Docket 5097, July 3, 1947]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 3d day of July A. D. 1947.

In the Matter of Ammiel F. Decker and Mable P. Decker, Individuals Trading and Doing Business as Decker Products Company

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and the exceptions filed thereto, briefs and supplemental briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Ammiel F. Decker and Mable P. Decker, individually and trading as Decker Products Company, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondents' mechanical device designated "Vacudex", or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication, that said device or any substantially similar device will:

1. Eliminate or reduce back pressure.
2. Save gasoline or oil.

3. Increase the power of the motor or cause it to give better performance.
4. Draw carbon, oil, or moisture from the muffler.
5. Reduce the vibration of the motor.
6. Give the motor greater acceleration or cause it to run more smoothly or more quietly.
7. Save tires.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] WM. P. GLENDENING, Jr.,
Acting Secretary.

[F. R. Doc. 47-7826; Filed, Aug. 20, 1947; 8:48 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

PART 214—ANNUITY BEGINNING DATE

EFFECT OF SERVICE PERFORMED THROUGH OR AFTER DESIGNATED BEGINNING DATE BY INDIVIDUALS WHOSE ELIGIBILITY IS NOT BASED UPON DISABILITY

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (Sec. 10, 50 Stat. 314; 45 U. S. C. 228j), § 214.7 (a) of the regulations of the Railroad Retirement Board under such act (4 F. R. 1477; 12 F. R. 1133) is amended, effective August 7, 1947, by Board Order 47-322 dated August 7, 1947, to read as follows:

§ 214.7 *Effect of service performed through or after designated beginning date*—(a) *By individuals whose eligibility is not based upon disability.* If such an individual renders compensated service to any person, whether or not an employer, through, or within six months after, the designated beginning date but prior to relinquishment of rights in accordance with Part 216 of this chapter, his annuity cannot begin to accrue earlier than the date following the last date of such compensated service. If the individual renders such compensated service after having relinquished rights in accordance with Part 216 of this chapter the beginning date of the annuity shall not be affected but no annuity shall be payable with respect to any month in which such service is performed if it is within the terms of Part 217 of this chapter.

(Sec. 10, 50 Stat. 314; 45 U. S. C. 228j)

Dated: August 15, 1947.

By authority of the Board.

[SEAL] MARY B. LINKINS,
Secretary of the Board.

[F. R. Doc. 47-7819; Filed, Aug. 20, 1947; 9:13 a. m.]

PART 335—SICKNESS BENEFITS AND MATERNITY BENEFITS

EXECUTION OF STATEMENT OF SICKNESS AND SUPPLEMENTAL DOCTOR'S STATEMENT

Pursuant to the authority contained in section 12 of the act of June 25, 1938 (Sec. 12, 52 Stat. 1107; 45 U. S. C. 362), § 335.103 of the regulations of the Railroad Retirement Board under such act (12 F. R. 4667) is amended, effective July 1, 1947, by Board Order 47-311 dated July 31, 1947, so that the first sentence thereof shall read as follows:

§ 335.103 *Execution of statement of sickness and supplemental doctor's statement.* A statement of sickness, and any supplemental doctor's statement which may be required by the Board, shall be executed by an individual who (a) is a doctor trained in medical and surgical diagnosis and licensed to practice his profession in the State or foreign jurisdiction in which the form is executed; or (b) is the superintendent or other supervisory official of a hospital, clinic, group health association, or other similar organization, in which all examination and treatment are conducted under the supervision of licensed doctors trained in medical and surgical diagnosis and in which medical records are maintained for each patient.

(Sec. 12, 52 Stat. 1107; 45 U. S. C. 362)

Dated: August 15, 1947.

By authority of the Board.

[SEAL] MARY B. LINKINS,
Secretary of the Board.

[F. R. Doc. 47-7811; Filed, Aug. 20, 1947; 9:13 a. m.]

TITLE 24—HOUSING CREDIT

Chapter V—Federal Housing Administration

Subchapter H—War Housing Insurance

PART 577—ADMINISTRATIVE REGULATIONS FOR WAR HOUSING INSURANCE UNDER SECTION 603 OF THE NATIONAL HOUSING ACT

EFFECTIVE DATE

Section 577.13 (11 F. R. 8575) is hereby amended by adding at the end thereof the following new sentences:

§ 577.13 *Effective date.* * * * The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 603 pursuant to the provisions of section 610 is issued to an approved mortgagee on or after August 19, 1947.

(Sec. 603, 55 Stat. 56, as amended, Pub. Law 388, 79th Cong., Pub. Law 366, 80th Cong.; 12 U. S. C. Sup. 1738)

Issued at Washington, D. C. August 19, 1947.

FRANKLIN D. RICHARDS,
Federal Housing Commissioner.

[F. R. Doc. 47-7830; Filed, Aug. 20, 1947; 9:57 a. m.]

PART 578—ADMINISTRATIVE RULES FOR WAR HOUSING INSURANCE UNDER SECTION 603 OF THE NATIONAL HOUSING ACT PURSUANT TO SECTION 610

APPROVAL OF MORTGAGEES

Sec.
578.1 Governmental institutions and mortgagees approved under section 603 (b) of the National Housing Act approved with respect to mortgages insured under section 603 pursuant to section 610.

APPROVAL OF ACCEPTABLE ASSIGNEES

578.2 Sections 576.9, 576.10, 576.11 of Part 576 this chapter and subchapter adopted with respect to mortgages insured under section 603 pursuant to section 610.

APPLICATION AND COMMITMENT

578.3 Submission of application.
578.4 Form of application.
578.5 Fee to accompany application.
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ELIGIBLE MORTGAGES

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ELIGIBLE MORTGAGORS

578.21 Mortgage must be only lien upon property.
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ELIGIBLE PROPERTIES

578.27 Nature of title to the realty.
578.28 Dwelling unit located on property.
578.29 Standards for buildings.
578.30 Effective date.

AUTHORITY: §§ 578.1 to 578.30, inclusive, issued under sec. 603, 55 Stat. 56, as amended, Pub. Law 388, 79th Cong., Pub. Law 366, 80th Cong.; 12 U. S. C. Sup., 1738.

APPROVAL OF MORTGAGEES

§ 578.1 *Governmental institutions and mortgagees approved under section 603 (b) of the National Housing Act approved with respect to mortgages insured under section 603 pursuant to section 610.* Any mortgagees approved under section 603 (b) of the National Housing Act are hereby approved as mortgagees with respect to mortgages insured under section 603 pursuant to the provisions of section 610. All of the provisions of §§ 576.1 to 576.8 of Part 576, of Subchapter H, Chapter V, Title 24, Code of Federal Regulations are hereby adopted as applicable to mortgages in-

sured under section 603 pursuant to section 610.

APPROVAL OF ACCEPTABLE ASSIGNEES

§ 578.2 *Sections 576.9, 576.10, 576.11 of Part 576 this chapter and subchapter adopted with respect to mortgages insured under section 603 pursuant to section 610.* Sections 576.9, 576.10, and 576.11 of Part 576, Title 24, Chapter V, Subchapter H, Code of Federal Regulations are hereby adopted and are applicable with respect to mortgages insured under section 603 pursuant to section 610.

APPLICATION AND COMMITMENT

§ 578.3 *Submission of application.* Any approved mortgagee may submit an application for insurance of a mortgage about to be executed or of a mortgage already executed.

§ 578.4 *Form of application.* The application must be made upon a standard form prescribed by the Commissioner.

§ 578.5 *Fee to accompany application.* If the application is for a firm commitment, it must be accompanied by the mortgagee's check for a sum computed at a rate of three dollars ($3) per thousand dollars ($1,000) of the original principal amount of the mortgage loan applied for, to cover the costs of appraisal by the Commissioner, but in no case shall such sum be less than ten dollars ($10). If an application is refused without an appraisal being made by the Commissioner, the fee will be returned to the applicant but no portion of the fee will be returned after appraisal or on account of any difference between the amount applied for and the amount approved for insurance.

If the application is for a conditional commitment, with respect to existing construction, it must be accompanied by the mortgagee's check for ten dollars ($10) regardless of the amount of the mortgage. The balance, if any, of the fee as stipulated herein shall be payable upon and shall accompany the application for the firm commitment, if any, subsequently submitted pursuant thereto.

§ 578.6 *Approval of application.* Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

ELIGIBLE MORTGAGES

§ 578.7 *Mortgage to be executed in connection with sale of housing by Government.* The mortgage must be executed in connection with the sale by the Government, or an agency or official thereof, of housing acquired or constructed under Public Law 849, 76th Congress, as amended; Public Law 781, 76th Congress, as amended, or Public Laws 9, 73, or 353, 77th Congress, as amended.

§ 578.8 *Form, lien.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, by a mortgagor with the qualifications hereinafter set forth in §§ 578.21 to 578.25, must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and the entire principal amount of the mortgage must have been disbursed to the mortgagor, or to his creditors for his account and with his consent.

§ 578.9 *Maximum amount of mortgage.* The mortgage must involve a principal obligation in an amount not in excess of ninety per centum of the appraised value of the mortgaged property as of the date the mortgage is accepted for insurance and should be in an amount of one hundred dollars ($100) or multiples thereof.

§ 578.10 *Payments and maturity dates.* The mortgage should come due on the first of a month and must have a maturity satisfactory to the Commissioner, not to be less than five nor more than twenty-five years from the date of insurance. The amortization period should be either 10, 15, 20, or 25 years by providing for either 120, 180, 240, or 300 monthly amortization payments.

§ 578.11 *Rate of interest.* The mortgage may bear interest at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such interest rate be in excess of four per centum (4%) per annum. Interest shall be payable in monthly installments on the principal then outstanding.

§ 578.12 *Amortization provisions.* The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 578.13 *Payment of insurance premiums.* The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth (1/12) of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect. The mortgage should provide that upon payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in § 577.3 (b) Part 577, Title 24, Chapter V, Subchapter H, Code of Federal Regulations, but shall not provide for the payment of any further charge on account of such prepayment.

§ 578.14 *Mortgagor's payments to include other charges.* The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments, and insurance premiums, before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 578.15 *Mortgagee's application of payments.* All monthly payments to be made by the mortgagor to the mortgagee as hereinabove provided, in §§ 578.11 to 578.14, inclusive, shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(a) Premium charges under the contract of insurance;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payment, constitute an event of default under the mortgage.

§ 578.16 *Late charge.* The mortgage may provide for a charge by the mortgagee of a "late charge", not to exceed two (2) cents for each dollar of each payment more than fifteen (15) days in arrears, to cover the extra expense involved in handling delinquent payments.

§ 578.17 *Mortgagor's payments when mortgage is executed.* The mortgagor must pay to the mortgagee, upon the execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage and may be required to pay a further sum equal to the first annual mortgage insurance premium, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment.

§ 578.18 *Initial service charge.* The mortgagee may charge the mortgagor the amount of the appraisal fee provided for in § 578.5 and an initial service charge to reimburse itself for the cost of closing the transaction. Such service charge shall not exceed one per centum (1%) of the original principal amount of the mortgage or a charge of twenty dollars ($20), whichever is the greater.

§ 578.19 *Approval of other charges.* In addition to the charges hereinbefore mentioned, the mortgagee may collect from the mortgagor only recording fees and such appraisal fees and cost of title

search as are approved by the Commissioner.

§ 578.20 *Project must be acceptable risk in view of shortage of housing.* The mortgage must be executed with respect to a project which, in the opinion of the Commissioner, is an acceptable risk in view of the shortage of housing.

ELIGIBLE MORTGAGORS

§ 578.21 *Mortgage must be only lien upon property.* A mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property: *Provided,* That if the mortgagor is a veteran and obtains a guaranteed loan under Title III of the Servicemen's Readjustment Act of 1944, as amended, the existence of such loan or any secondary lien upon the mortgaged property to secure such loan shall not render the first mortgage ineligible for insurance.

§ 578.22 *Relationship of income to mortgage payments.* A mortgagor must establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 578.23 *Credit standing of mortgagor.* A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 578.24 *Residence of mortgagor.* A mortgagor is not restricted as to place of residence and need not be the occupant of the property covered by the mortgage.

§ 578.25 *Occupancy priority to veterans of World War II.* The mortgagor must establish, prior to insurance, in a manner satisfactory to the Commissioner, that preference or priority of opportunity to purchase or rent will be given to veterans of World War II and their immediate families, except that this requirement does not apply to hardship cases as defined by the Commissioner and approved by him.

§ 578.26 *Holding property for rent.* The Commissioner may, in his discretion, require the mortgagor to establish that the property will be held for rent in such instances and for such periods of time as the Commissioner may prescribe.

ELIGIBLE PROPERTIES

§ 578.27 *Nature of title to the realty.* A mortgage to be eligible for insurance must be on real estate held in fee simple, or on leasehold under a lease for not less than ninety-nine (99) years which is renewable, or under a lease with a period of not less than fifty (50) years to run from the date the mortgage is executed.

§ 578.28 *Dwelling unit located on property.* At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than seven families.

§ 578.29 *Standards for buildings.* The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

§ 578.30 *Effective date.* The Administrative rules in this part are effective as to all mortgages on which a commitment to insure under section 603 pursuant to section 610 is issued to an approved mortgagee on or after August 19, 1947.

Issued at Washington, D. C., August 19, 1947.

FRANKLIN D. RICHARDS,
Federal Housing Commissioner.

[F. R. Doc. 47-7831; Filed, Aug. 20, 1947; 9:57 a. m.]

Subchapter I—War Rental Housing Insurance

PART 582—ADMINISTRATIVE REGULATIONS FOR WAR RENTAL HOUSING INSURANCE UNDER SECTION 608 OF THE NATIONAL HOUSING ACT APPLICABLE TO ALL MORTGAGES INSURED UNDER SECTION 608

EFFECTIVE DATE

Section 582.20 (7 F. R. 4267) is hereby amended to read as follows:

§ 582.20 *Effective date.* The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 608 is issued on or after August 15, 1946. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 608, pursuant to the provisions of section 610, is issued on or after August 19, 1947. (Sec. 608, 56 Stat. 603, as amended, Pub. Law 366, 80th Cong.; 12 U. S. C., Sup. 1743)

Issued at Washington, D. C., August 19, 1947.

FRANKLIN D. RICHARDS,
Federal Housing Commissioner.

[F. R. Doc. 47-7832; Filed, Aug. 20, 1947; 9:57 a. m.]

PART 583—ADMINISTRATIVE RULES UNDER SECTION 608, PURSUANT TO SECTION 610, OF TITLE VI OF THE NATIONAL HOUSING ACT

APPROVAL OF MORTGAGEES

Sec.
583.1 Classification of mortgagees.
583.2 Property inspection by mortgagee.
583.3 Non-approval.
583.4 Withdrawal of approval.

APPLICATION AND COMMITMENT

583.5 Submission of application.
583.6 Form of application.
583.7 Application fee.
583.8 Approval of application.

ELIGIBLE MORTGAGES

583.9 Eligible mortgages.
583.10 Mortgage must be on approved form.
583.11 Amount of principal obligation.
583.12 Maturity.
583.13 Interest rate.
583.14 Amortization provisions.
583.15 Payment requirements.
583.16 Covenants for fire and hazard insurance.
583.17 Additional payment requirements.
583.18 Rights and remedies of mortgagee in event of default or foreclosure.
583.19 Initial service charge.
583.20 Recording fees, etc.
583.21 Additional terms and conditions.
583.22 Soundness of project risk.

ELIGIBLE MORTGAGORS

583.23 Property free of liens and obligations.
583.24 Occupancy priority to veterans.
583.25 Satisfactory credit standing.
583.26 Requirements regarding form of mortgagor.

SUPERVISION OF MORTGAGORS

583.27 Assurance of completion, off-site utilities.
583.28 Regulation of mortgagor by Commissioner, in general.
583.29 Required supervision of mortgagor.
583.30 Waiver of requirements.

ELIGIBLE PROPERTIES

583.31 Eligibility of property.

TITLE

583.32 Eligibility of title.
583.33 Title evidence.

EFFECTIVE DATE

583.34 Effective date.

AUTHORITY: §§ 583.1 to 583.34, inclusive, issued under sec. 608, 56 Stat. 603, as amended, Pub. Law 366, 80th Cong.; 12 U. S. C., Sup. 1743.

APPROVAL OF MORTGAGEES

§ 583.1 *Classification of mortgagees.* The following may become the mortgagee of a mortgage insured under section 608 of the National Housing Act, pursuant to section 610:

(a) Any institution or organization which is approved as a mortgagee under sections 203 (b) or 603 (b) of the National Housing Act; and

(b) Any other chartered institution or permanent organization having succession, upon its approval by the Commissioner for a particular transaction.

§ 583.2 *Property inspection by mortgagee.* As a condition precedent to insurance, the mortgagee must agree that it will ascertain the general physical condition of the mortgaged property at intervals not greater than one (1) year, and that, if at any time it be determined by the mortgagee that, in addition to ordinary wear and tear, the mortgaged property is being subjected to permanent or substantial injury, through unreasonable use, abuse or neglect, the mortgagee will, unless adequate provision satisfactory to a prudent lender is made for the prompt restoration of the mortgaged property, forthwith take such action as may be available to it under the mortgage and appropriate to the particular case, for the protection and preservation of the mortgaged property and the income therefrom, and the submission of an application for insurance shall be evidence of such agreement.

§ 583.3 *Non-approval.* The Commissioner reserves the right to refuse to approve any institution or organization as the mortgagee of a particular mortgage or to withhold any such approval pending compliance by such institution or or-

ganization, with additional conditions which in the discretion of the Commissioner are required in the particular case.

§ 583.4 *Withdrawal of approval.* Approval of a mortgagee may be withdrawn by notice from the Commissioner upon violation of the agreement mentioned in § 583.2, and such approval may also be withdrawn at any time for other cause sufficient to the Commissioner, but no withdrawal will in any way affect the insurance on mortgages theretofore accepted for insurance.

APPLICATION AND COMMITMENT

§ 583.5 *Submission of application.* Any approved mortgagee may submit an application for insurance of a mortgage about to be executed or of a mortgage already executed.

§ 583.6 *Form of application.* The application must be made upon a standard form prescribed by the Commissioner and filed at the local Federal Housing Administration office serving the area in which the property is located.

§ 583.7 *Application fee.* The application must be accompanied by the mortgagee's check to cover, (a) an "Application Fee" computed at the rate of one dollar and fifty cents ($1.50) per thousand dollars ($1,000) of the original face amount of the mortgage loan for which application is made, to cover the costs of analysis by the Commissioner, and (b) a sum (referred to as "Commitment Fee") which when added to the Application Fee will aggregate three dollars ($3) per thousand of the face amount of the mortgage loan approved for insurance by the Commissioner, and which shall be paid at the time of delivery of the commitment. If the application is refused without an estimate of replacement cost being made by the Commissioner, the fee paid will be returned to the applicant. If, after insurance, the amount of an insured mortgage is increased either by amendment or by the substitution of a new insured mortgage, a further fee shall be paid, based upon the amount of such increase.

§ 583.8 *Approval of application.* Upon approval of an application, a commitment will be issued upon a form approved by the Commissioner, setting forth the terms and conditions upon which the mortgage will be insured.

ELIGIBLE MORTGAGES

§ 583.9 *Eligible mortgages.* To be eligible for insurance the mortgage must be executed in connection with the sale by the United States Government, or an agency or official thereof, of housing acquired or constructed under Public Law 849, 76th Congress, as amended; Public Law 781, 76th Congress, as amended; or Public Laws 9, 73 or 353, 77th Congress, as amended.

§ 583.10 *Mortgage must be on approved form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated by a mortgagor with the qualifications hereinafter set forth in §§ 583.23 to 583.26, inclusive; must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and the mortgagee must be obligated, as a part of the mortgage transaction, to disburse the entire principal amount of the mortgage to, or for the account of, the mortgagor.

§ 583.11 *Amount of principal obligation.* The mortgage must secure a principal obligation in multiples of one hundred dollars ($100) but not in excess of five million dollars ($5,000,000) and not in excess of ninety per centum (90%) of the appraised value of the property as determined by the Commissioner.

§ 583.12 *Maturity.* The mortgage must have a maturity satisfactory to the Commissioner not to exceed 25 years from the date of insurance.

§ 583.13 *Interest rate.* The mortgage may bear interest at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such interest rate be in excess of four per centum (4%) per annum. Interest shall be payable only on principal outstanding and shall be payable in monthly installments.

§ 583.14 *Amortization provisions.* The mortgage must contain complete amortization provisions satisfactory to the Commissioner requiring monthly payments on a level annuity or declining annuity basis as agreed upon by the mortgagor and mortgagee. Payments on account of principal must begin not later than the first day of the month next succeeding the expiration date of the commitment.

§ 583.15 *Payment requirements.* The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth (1/12) of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect. The mortgage shall provide that upon the payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in § 582.4 of this chapter.

§ 583.16 *Covenants for fire and hazard insurance.* The mortgage shall contain a covenant binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the co-insurance clause applicable to the location and character of the property, but not less than eighty percent (80%) of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of the issuance of the commitment. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 583.17 *Additional payment requirements.* (a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held in trust for the benefit and account of the mortgagor by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) All monthly payments to be made by the mortgagor to the mortgagee as hereinabove provided in §§ 583.13 to 583.17 inclusive, shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;
(2) Ground rents, taxes, water rates, special assessments, and fire and other hazard insurance premiums;
(3) Interest on the mortgage; and
(4) Amortization of the principal of the mortgage.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to or on the due date of the next such payment, constitute an event of default under the mortgage.

§ 583.18 *Rights and remedies of mortgagee in event of default or foreclosure.* The mortgage must contain a provision or provisions, satisfactory to the Commissioner, giving to the mortgagee, in the event of default or foreclosure of the mortgage, such rights and remedies for the protection and preservation of the property covered by the mortgage and the income therefrom, as are available under the law or custom of the jurisdiction.

§ 583.19 *Initial service charge.* The mortgagee may charge the mortgagor the amount of the application fees provided in § 583.7 of the regulations in this part and an initial service charge to reimburse itself for the cost of closing the transaction. Such initial service charge may be in an amount not in excess of one per centum (1%) of the original principal amount of the mortgage.

§ 583.20 *Recording fees, etc.* In addition to the charges hereinbefore mentioned, the mortgagee may collect from the mortgagor only recording fees, mortgage and stamp taxes, if any, and such costs of survey and title search as are approved by the Commissioner.

§ 583.21 *Additional terms and conditions.* The mortgage may contain such other terms, conditions and provisions with respect to release of parts of the mortgaged property from the lien of the

mortgage, insurance, repairs, alterations, payment of taxes, default and management reserves, foreclosure proceedings, anticipation of maturity, and other matters as the Commissioner may in his discretion prescribe or approve. The mortgagee may include in the mortgage a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee; *Provided, however,* That the mortgagor must be permitted to prepay up to fifteen per centum (15%) of the original principal amount of the mortgage in any one calendar year without any such additional charge.

§ 583.22 *Soundness of project risk.* The mortgage must be executed with respect to a project which, in the opinion of the Commissioner, is an acceptable risk in view of the shortage of housing.

ELIGIBLE MORTGAGORS

§ 583.23 *Property free of liens and obligations.* A mortgagor must establish that upon final disbursement of the loan, the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 583.24 *Occupancy priority to veterans.* The mortgagor must establish, in a manner satisfactory to the Commissioner, that preference or priority of opportunity to occupy will be given to veterans of World War II and their immediate families, except that this requirement does not apply to hardship cases as defined by the Commissioner and approved by him.

§ 583.25 *Satisfactory credit standing.* A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 583.26 *Requirements regarding form of mortgagor.* In addition to meeting the requirements set forth above in this section, the mortgagor may be (a) an individual; or (b) a corporation or trust formed or created for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto. In either case the Commissioner may require that the mortgagor be regulated or restricted by the Commissioner as to rents or sales or charges and methods of operation to such extent as may be deemed advisable by the Commissioner. In the case of a corporation or trust the mortgagor may be regulated by the Commissioner with respect to capital structure. Such regulation or restriction shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commissioner to issue debentures as a result of such termination. So long as the contract of insurance is in effect a corporate mortgagor shall agree not to engage in any business other than the operation of a rental housing project or projects; or (c) a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend corporation formed under and restricted by Federal or State housing laws as to rents, charges, and methods of operation.

SUPERVISION OF MORTGAGORS

§ 583.27 *Assurance of completion, off-site utilities.* The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent under an appropriate agreement of such cash as may be required for the completion of off-site public utilities and streets.

§ 583.28 *Regulation of mortgagor by Commissioner, in general.* (a) A corporate mortgagor or trust shall be regulated through the ownership by the Commissioner of certain shares of special stock (or other evidence of beneficial interest in the mortgagor) which stock or interest will acquire majority voting rights in the event of default under the mortgage or violation of provisions of the charter of the mortgagor or the violation of any valid agreement entered into between the mortgagor, the mortgagee and/or the Commissioner, but only for a period coextensive with the duration of such default or violation. The shares of stock or of beneficial interest issued to the Commissioner, his nominee or nominees and/or the Federal Housing Administration shall be in sufficient amount to constitute under the laws of the particular State a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate $100. Such stock shall be represented by certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees and/or in the name of the Federal Housing Administration, as the Commissioner shall require. Upon the termination of all obligations of the Commissioner under his contract of mortgage insurance or any succeeding contract or agreement covering the mortgage obligation, including the obligation upon the Commissioner to issue debentures as a result of such termination, all regulation and restriction of the mortgagor shall cease. When the right of the Commissioner to regulate or restrict the mortgagor shall so terminate, the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payments therefor plus accrued dividends, if any, thereon. Such regulation and the additional regulation or restriction hereinafter provided in this section shall be made effective by incorporation of appropriate provisions therefor in the charter or other instrument under which the mortgagor is created, or by agreement.

(b) In the case of an individual mortgagor, regulation by the Commissioner may be exercised through a regulatory agreement in form and content satisfactory to the Commissioner.

§ 583.29 *Required supervision of mortgagor.* The folllowing are the items which will be regulated or restricted in the manner and to the extent hereinbefore indicated;

(a) No charge shall be made by the mortgagor for the accommodations offered by the project in excess of a rental schedule to be filed with the Commissioner and approved by him or his duly constituted representative prior to the opening of the project for rental, which schedule shall be based upon a maximum average rental fixed prior to the insurance of the mortgage, and shall not thereafter be changed except upon application of the mortgagor to, and the written approval of the change by, the Commissioner.

(b) The established maximum rental shall be the maximum authorized charge against any tenant for the accommodations offered and shall include all services except telephone, gas, electric, and refrigeration facilities. Charges permitted in addition to such maximum rental shall be subject to the approval of the Commissioner.

(c) The regulation and restriction provided for in the paragraphs (a) and (b) of this section shall not apply so long as the maximum rents are regulated by another agency of the United States Government. Such maximum rental as established by such agency of the United States will be accepted by the Commissioner as an approved rent schedule. Upon the expiration of the authority of any such agency to fix maximum rentals, the established maximum rental schedule then in force with respect to the project shall be the established maximum rental schedule within the provisions of paragraphs (a) and (b) of this section, and shall not thereafter be changed except upon approval of the Commissioner.

(d) A reserve for replacement shall be accumulated and maintained with the mortgagee so long as the mortgage insurance is in force, and the amount and types of such reserves and conditions under which they shall be accumulated, replenished and used, shall be specified in the charter or regulatory agreement. Failure to comply with the terms of this requirement may be considered by the Commissioner as a default under the terms of the charter.

(e) The mortgagor shall keep full and complete records of all corporate meetings of directors, stockholders and finance committee, if any, and of the elections and resignations of its officers; and shall keep complete, orderly and accurate books of account and shall also keep copies of all written contracts or other instruments which affect it or any of its property which shall be subject to inspection and examination by the Commissioner or his duly authorized agents at all reasonable times.

(f) The mortgagor shall furnish at the request of the Commissioner, his employees or attorneys, specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, condition of the property and the status of the insured mortgage and any other information with respect to the mortgagor or its property which may rea-

sonably be required. The above enumeration of specific items shall not be deemed in any manner to limit the generality of the preceding sentence. In case the mortgagor is in default either under the insured mortgage or under its charter, or has failed to meet any of the applicable requirements of this section or is in default with respect to any agreement between the mortgagor and the mortgagee or under any contract for the improvement of the mortgaged premises or under any agreement to which the Federal Housing Commissioner is a party, or in case an inspection shows that the property is not being managed or maintained in a manner satisfactory to the Commissioner, the Commissioner may require the mortgagor to furnish at the expense of the latter a complete audit of its books of account duly certified by a public accountant satisfactory to the Commissioner.

§ 583.30 *Waiver of requirements.* In the event the mortgagor is a Federal or State instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend corporation formed under and restricted by Federal or State housing laws as to rents, charges and methods of operation, as described in § 583.26 (c), the Commissioner may, in his discretion, waive the requirements set forth in this section, in whole or in part.

ELIGIBLE PROPERTIES

§ 583.31 *Eligibility of property.* (a) A mortgage to be eligible for insurance must be on real estate held in fee simple, or on the interest of the lessee under a lease for not less than ninety-nine (99) years which is renewable, or under a lease having a period of not less than fifty (50) years to run from the date the mortgage is executed.

(b) At the time the mortgage is insured there shall be housing accommodations on the mortgaged property designed principally for residential use for not less than eight (8) families in the aggregate conforming to standards satisfactory to the Commissioner.

TITLE

§ 583.32 *Eligibility of title.* In order to be eligible for insurance, the Commissioner must determine that marketable title to the mortgaged property is vested in the mortgagor as of the date the mortgage is filed for record. The Commissioner will examine the title to property covered by a mortgage offered for insurance and in the event a determination of eligibility with respect to title is made as herein provided, such finding shall constitute a part of the contract of insurance evidenced by the insurance endorsement.

§ 583.33 *Title evidence.* Upon endorsement of the mortgage for insurance, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey and title evidence satisfactory to him as provided in paragraphs (a), (b), (c), or (d) of this section as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner and which offers substantially the same coverage under substantially the same conditions and stipulations. Such policies may contain such "permitted" and other exceptions, restrictions, and limitations as are approved by the Commissioner. The policy shall become effective as of the date the mortgage is filed for record and shall run to the mortgagee and the Commissioner, their successors and assigns, as their respective interests may appear.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

EFFECTIVE DATE

§ 583.34 *Effective date.* These Administrative Rules are effective as to all mortgages on which a commitment to insure under section 608, pursuant to section 610, is issued, on or after August 19, 1947.

Issued at Washington, D. C., August 19, 1947.

FRANKLIN D. RICHARDS,
Federal Housing Commisisoner.

[F. R. Doc. 47-7833; Filed, Aug. 20, 1947; 9:58 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, War Department

PART 205—DUMPING GROUNDS, REGULATIONS

ASHLEY RIVER AND CHARLESTON HARBOR, SOUTH CAROLINA

Pursuant to the provisions of section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U. S. C. 419), § 205.30 pertaining to the dumping ground established along the west shore of Hog Island in Charleston Harbor, South Carolina, is hereby enlarged, the regulations governing dumping in Ashley River and Charleston Harbor being amended as follows:

§ 205.30 *Ashley River and Charleston Harbor, S. C.—(a) Dumping Grounds.* * * *

(1) Along the east shore of Cooper River opposite Charleston, not more than one-fourth mile from the shore line at low water, north of an east and west line through a point 200 feet south of the southerly end of Hog Island, and south of a line parallel to and 500 feet south of the John P. Grace Memorial Bridge.

* * * * *

(b) *Regulations.* * * *

(13) No dumping shall be done in Charleston Harbor or adjacent waters, outside the dumping grounds herein prescribed, unless specifically authorized by a War Department permit.

[Regs. July 22, 1947, CE 827.41 (Charleston Harbor, S. C.)-ENGWR] (33 Stat. 1147; 33 U. S. C. 419)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 47-7798; Filed, Aug. 20, 1947; 8:45 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

Subchapter C—National Wildlife Refuges; Individual Regulations

PART 21—PACIFIC REGION NATIONAL WILDLIFE REFUGES

DESERT GAME RANGE, NEVADA; HUNTING

§ 21.227 *Desert Game Range, Nevada; hunting.* (a) Until further notice, deer may be taken on certain lands of the United States, hereinafter described, within the Desert Game Range, during such periods of special open season and in such numbers and sex as may be prescribed by the State Fish and Game Commission of Nevada, after a joint annual examination of the range by the Fish and Wildlife Service and the Fish and Game Commission of Nevada, subject to the following special provisions, conditions, restrictions, and requirements.

(1) *Area open to hunting.* The following described lands of the United States within the Desert Game Range shall be open to the hunting of deer:

Beginning at a point where the Kyle Canyon Road intersects Highway No. 95 near Tule Springs Ranch; thence in a westerly direction along the Kyly Canyon Road approximately 6 miles; thence in a southwesterly direction along the ridge and summit of LaMadre Mountain to the summit of the Spring Mountain Range; thence in a northwesterly direction along the summit of Spring Mountain Range to the boundary of the Nevada National Forest; thence in northerly and westerly directions along the eastern and northern boundaries of the Nevada National Forest to the extreme northwest corner of said Forest; thence in a westerly direction to the Nye and Clark County line; thence north to Highway No. 95; thence in an easterly and southeasterly direction along Highway No. 95 to the point of beginning.

(2) Entry on and use of the Range for any purpose is governed by the regulations of the Secretary dated December 19, 1940 (5 F. R. 5284), as amended, and regulations for the administration of Game Ranges established in conjunction

with the organization of Grazing Districts under the Taylor Grazing Act (sec. 1, 48 Stat. 1269, as amended; 43 U. S. C. 315), and strict compliance therewith is required.

(3) Strict compliance with all State laws and regulations is required, and any person who hunts on the Range must have in his possession, and exhibit at the request of any authorized Federal or State officer, a valid State hunting license and a special permit issued by the State authorizing him to hunt on the area. Such State license and permit will serve as a Federal permit for entry on the Range for the purpose of hunting.

(b) State cooperation may be enlisted in the regulation, management, and operation of the public hunting areas, and the State may promulgate such special regulations as may be necessary for such regulation, management, and operation. In the event such State regulations are issued, compliance therewith shall be a requisite to lawful entry for the purpose of hunting. (Sec. 1, 48 Stat. 1269, as amended; 43 U. S. C. 315)

Dated: August 5, 1947.

CLARENCE COTTAM,
Acting Director.

[F. R. Doc. 47-7828; Filed, Aug. 20, 1947; 8:56 a. m.]

PART 26—EAST CENTRAL REGION NATIONAL WILDLIFE REFUGES

NECEDAH NATIONAL WILDLIFE REFUGE, WISCONSIN; FISHING

Section 26.678 is revised to read as follows:

§ 26.678 *Necedah National Wildlife Refuge, Wisconsin; fishing.* (a) Noncommercial fishing in accordance with the State laws of Wisconsin is permitted during the months of January and February, and during the period from May 30 to Labor Day, both inclusive, in all of the waters of the Refuge that are designated by suitable posting by the officer in charge, in accordance with the following conditions and restrictions:

(b) Entry on and use of the refuge for any purpose is governed by the regulations for the administration of national wildlife refuges dated December 19, 1940 (5 F. R. 5284), as amended, and strict compliance therewith is required. All persons fishing on the refuge must comply with the State fishing laws and regulations, and must have on their person and exhibit at the request of any authorized Federal or State officer whatever license or licenses may be required by such laws and regulations, which said license shall serve as a Federal permit for fishing on the refuge.

(c) Persons fishing on the refuge may use boats (other than motor boats or floated craft) for the purpose of fishing, but may place such boats or craft on the waters of the refuge only at such points as may be designated by suitable posting by the officer in charge. The use of motor boats, either inboard or outboard, is prohibited on all waters of the refuge except for official purposes.

(d) During periods of waterfowl concentrations, or other wildlife concentrations, fishing may be closed on such areas of the refuge, as, in the judgment of the officer in charge, such limitations or restrictions are necessary in order to provide adequate protection for wildlife. Such limitations or restrictions are to be clearly designated by posting.

(e) State cooperation may be enlisted in the regulation, management, and operation of the public fishing areas, and the State may promulgate such special regulations as may be necessary for such regulation, management, and operation. In the event such State regulations are issued, compliance therewith shall be a requisite to lawful entry for the purpose of fishing. (Sec. 10, 45 Stat. 1224, as amended; 16 U. S. C. 715 i)

Dated: August 12, 1947.

CLARENCE COTTAM,
Acting Director.

[F. R. Doc. 47-7808; Filed, Aug. 20, 1947; 8:56 a. m.]

PROPOSED RULE MAKING

TREASURY DEPARTMENT

Bureau of Customs

[19 CFR, Part 6]

[192-31.32]

C. A. A. FIELD, JUNEAU, ALASKA

NOTICE OF PROPOSED DESIGNATION AS TEMPORARY AIRPORT OF ENTRY FOR PERIOD OF 1 YEAR

Notice is hereby given that, pursuant to authority contained in section 7 (b) of the Air Commerce Act of 1926, as amended (49 U. S. C., Sup., 177 (b)), it is proposed to designate the C. A. A. Field, Juneau, Alaska, as a temporary airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of said act (49 U. S. C. 179 (b)), for a period of 1 year; and it is further proposed to amend the list of temporary airports of entry in § 6.13, Customs Regulations of 1943 (19 CFR, Cum. Supp., 6.13), as amended, to show such designation.

This motion is published pursuant to section 4 of the Administrative Procedure Act (Pub. Law 404, 79th Cong.). Data, views, or arguments with respect to the proposed designation of the above-mentioned airport as an airport of entry may be addressed to the Commissioner of Customs, Bureau of Customs, Washington 25, D. C., in writing. To assure consideration of such communications, they must be received in the Bureau of Customs not later than 20 days from the date of publication of this notice in the FEDERAL REGISTER.

[SEAL] A. L. M. WIGGINS,
Acting Secretary of the Treasury.

AUGUST 14, 1947.

[F. R. Doc. 47-7829; Filed, Aug. 20, 1947; 9:13 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[P. & S. Docket Nos. 553, 554, 555]

NEW JERSEY COOP CO., INC., ET AL.

NOTICE OF PETITION FOR INCREASE IN RATES

In re New Jersey Coop Company, Inc., et al. respondents.

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), the Secretary of Agriculture issued an order on December 20, 1946 (5 A. D. 885) continuing in effect the rates and charges provided for in an order issued January 15, 1946 (5 A. D. 12) to and including December 31, 1947. This order also continues the monthly reporting requirement of the order of January 15, 1946, *supra*.

By petition filed August 6, 1947, the respondents have requested that an increase of 3¢ per coop to take effect as soon as possible and to remain in effect to and including December 31, 1948, unless modified before that date, be authorized. The effect of such increase would be to increase the revenue of respondents.

It appears that public notice should be given of the filing of this petition in order that all interested persons may have an opportunity to be heard in the matter.

Now, therefore, notice is hereby given to the public and to all interested persons of the filing of such petition for an increase in rates.

All interested persons who desire to be heard upon the matter requested in said petition shall notify the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., within 15 days from the date of publication of this notice.

Copies hereof shall be served upon the respondents by registered mail or in person.

Done at Washington, D. C., this 15th day of August 1947.

[SEAL] PRESTON RICHARDS,
Acting Director, Livestock Branch, Production and Marketing Administration.

[F. R. Doc. 47-7817; Filed, Aug. 20, 1947; 8:47 a. m.]

[7 CFR, Part 941]

HANDLING OF MILK IN CHICAGO, ILLINOIS, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENTS TO ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR Supps., 901.1 et seq.; 11 F. R. 7737; 12 F. R. 1159, 4904) a public hearing was held at Chicago, Illinois, on March 5–8 and 10–12, 1947, inclusive, pursuant to the notice thereof which was published in the FEDERAL REGISTER on February 27, 1947 (12 F. R. 1394), upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, the Acting Assistant Administrator, Production and Marketing Administration, on July 11, 1947, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER July 16, 1947 (12 F. R. 4722).

The material issues presented on the record of the hearing were whether:

1. The "handler" definition should be revised to provide that it shall not apply to any person selling a larger percentage of his Class I milk as a handler under a marketing agreement or order effective in another fluid milk marketing area;

2. The defined area known as "surplus milk manufacturing area" should be expanded;

3. All frozen cream, other cream frozen, plastic cream, and similar cream products disposed of beyond the limits of the surplus milk manufacturing area should be classified as Class II milk;

4. The accounting for milk and cream transferred from approved to unapproved plants should be on a daily basis;

5. Flavored milk, flavored milk drinks, and buttermilk should be reclassified from Class I milk to Class II milk;

6. The maximum amount of plant shrinkage allowed as Class IV milk should be increased;

7. The price structure for Class I milk and Class II milk should be revised as to level and seasonality;

8. The basic formula price provisions should be revised as to the (i) "evaporated-pay-price" formula, (ii) "butter-nonfat dry milk solids" formula (revision of the butter-nonfat dry milk solids formula therein would affect also the level of the Class IV milk price), and (iii) application of the alternate formulas set forth therein;

9. The plant location adjustment credits to handlers applicable to (i) fluid milk, fluid skim milk, and certain Class I milk, and (ii) Class II milk, should be increased;

10. The butterfat differential applicable to producer milk testing above or below 3.5 percent of butterfat should be revised;

11. A change should be made in the level and method of determining the prices to be paid for Class I milk disposed of in markets outside the marketing area;

12. The price formula for Class II milk should include a storage allowance for frozen cream stored;

13. The "approved plant" definition should be revised and whether there should be included new provisions (i) establishing additional requirements for plants desiring to participate in the "market-wide pool," and (ii) providing for the suspension as a "pool plant" of any plant not meeting such requirements;

14. The pool treatment of the classified value of frozen cream, based on the inventory character of this product, should be revised for the purpose of implementing a wider seasonal variation in producer prices;

15. The location adjustments applicable to the announced uniform "70 mile zone" price to producers should be changed; and

16. Several revisions of language should be made to obtain further clarity and to simplify administrative problems with respect to:

(i) The determination of tests of chocolate milk drinks;

(ii) Precision of language in pool computation provisions;

(iii) Classification of butterfat remaining in skim milk separated;

(iv) Assessments for expenses of administration; and

(v) Assessments for marketing services.

Rulings on exceptions. No specific exceptions were filed to the findings, conclusions and amendment action recommended in the Acting Assistant Administrator's recommended decision with respect to issues numbered 1, 2, 13, and 16. The findings, conclusions and amendment action so recommended have been adopted in this decision without substantive change. One set of exceptions requested oral argument thereof. No supporting reasons were given for the request and it is denied.

Exceptions were filed by the following parties to the findings, conclusions and amendment action recommended by the Acting Assistant Administrator with respect to certain issues, as follows:

1. Associated Milk Dealers, Inc.: Issues 5–11, inclusive.

2. Certain organizations who designate themselves as the "Northern Cooperatives"; Issues 3–9, inclusive, 12 and 15.

3. The Borden Company: Issues 5–10, inclusive, 14 and 15.

4. Ice Cream Manufacturers Association of Cook County, Inc.: Issues 7, 11 and 12.

5. Hydrox Corporation: Issues 7, 11, and 12.

6. Pure Milk Products Cooperative: Issue 15.

In arriving at the findings, conclusions and amendment action decided upon in this decision each of these exceptions was carefully and fully considered in conjunction with the record evidence pertaining thereto. The findings, conclusions and amendment action recommended by the Assistant Adminsitrator with respect to issues 5 and 10 have been adopted herein without change and the exceptions with respect thereto are overruled. To the extent that the findings, conclusions and amendment action decided upon herein with respect to the remaining issues are at variance with the exceptions pertaining thereto, such exceptions are overruled.

General exceptions also were filed by the Northern Cooperatives and by the Hydrox Corporation. Such exceptions did not specify in what respect the recommendations of the Acting Assistant Administrator should not be adopted and these are overruled.

It was contended with respect to the actions recommended by the Acting Assistant Administrator on issues 4, 7, 8 (iii) and 15 that they were not proposed by the hearing notice. The action on issue 8 (ii) recommended by the Acting Assistant Administrator was excepted to on the ground that it was not supported by a proposal in the record. In each such case the action recommended by the Acting Assistant Administrator and adopted herein is within the reasonable scope of an issue raised by the hearing notice and record. These exceptions are overruled.

Findings and conclusions. The following findings and conclusions on the material issues are based upon the evidence introduced at the hearing and the record thereof:

(1) The proposed addition of language to the definition of "handler" to exclude "any person who sells a larger percentage of Class I milk handled by him in a marketing area under any other milk marketing agreement or order issued under the act where such person is a handler subject to such other milk marketing agreement or order" should not be adopted at this time.

The primary purpose of this proposal is to change the basis of determining under which order a handler is subject to regulation in case Class I milk is sold in both the Chicago marketing area under Order 41 and the Suburban Chicago marketing area under Order 69. Under the current provisions of these orders a handler becomes subject to regulation under Order 41 when his plant is approved for the shipment of milk to the Chicago marketing area for use as Class I milk even though any or all of his Class I milk may be sold in the Suburban Chicago (or other) marketing area.

The proposal would make it possible for some handlers to shift constantly from one order to another in different delivery periods depending on seasonal advantages. Such shifting would not be conducive to the orderly marketing of milk in the Chicago marketing area and might provide some undue competitive advantages to these handlers. The proposal also could prevent beneficial transfers of milk between regulated markets if the transferring handler preferred to

retain status under one order but the transfer resulted in the loss of that status. The question and problems raised by this proposal are closely related also to the proper phrasing and content of other provisions of each of the orders, such as the type of pool, the limits of the marketing area, and other definitions. These matters were not fully considered at this hearing, and there is a consequent lack of adequate evidence in solution of the various problems which would result from the adoption of this proposal. In addition, application of the particular proposal offered would be administratively burdensome.

(2) The "surplus milk manufacturing area" should be expanded to include the counties of Stark, Marshall, Woodford, Livingston, Ford, and Iroquois, in the State of Illinois, the counties of Benton, White, Cass, Miami, Howard, Carroll, Tippecanoe, Tipton, Clinton, Fountain, Warren, Parke, Vermilion, Vigo, and Sullivan, in the State of Indiana, and the county of Van Wert, in the State of Ohio.

Plant facilities operated by or readily available to handlers exist in these counties for the disposal of surplus milk from the Chicago marketing area. The inclusion of these counties will facilitate the handling of such surplus milk.

(3) The classification provisions should be revised to specify the final classification as Class II milk of frozen cream, other cream frozen, plastic cream and any similar cream product disposed of outside the surplus milk manufacturing area.

The surplus milk manufacturing area has been defined broadly enough to furnish under present conditions adequate facilities for the disposal for manufacturing purposes (as Class III milk or Class IV milk) of frozen cream, other cream frozen, plastic cream, and any similar cream product in surplus supply. Therefore, it is reasonable to assume that when such items are moved outside such surplus milk manufacturing area they will be employed in their customary uses as ice cream or as other milk products defined as Class II milk under the Chicago order.

This will provide a uniform method of verifying and classifying all Class I and Class II milk item moved beyond the limits of the surplus milk manufacturing area and readily susceptible of reuse in the form of other milk products.

(4) The classification provisions covering fluid milk or fluid cream transferred from approved plants to unapproved plants located within the "surplus milk manufacturing area" should be amended so as to be more specific in regard to an allocation plan to be followed in classifying such approved fluid milk or fluid cream taking into account types of supporting utilization records.

Fluid milk and fluid cream are transferred from approved plants to unapproved plants in the "surplus milk manufacturing area." It has been the practice of the market administrator to accept daily utilization records in support of claimed classification of milk at such unapproved plants. It was proposed that this established market practice be formalized and no objections were raised thereto. Therefore, this proposal is adopted.

In some unapproved plants approved fluid milk or fluid cream is segregated from receipts of unapproved sources. In other unapproved plants approved fluid milk or fluid cream is commingled with receipts from other sources. Classification problems are more complicated where approved milk is commingled with unapproved receipts. In the classification of approved fluid milk or fluid cream which is commingled with unapproved receipts in a plant having diversified uses it is necessary to allocate the use of such approved milk and cream since its specific utilization cannot be shown.

In most instances the quality of Chicago fluid milk is higher than that of unapproved milk. Fluid milk from approved plants is frequently used for selected manufacturing purposes in preference to that from unapproved sources. Unapproved, or "Grade B," milk is disposed of from unapproved plants in many different forms, including fluid milk and fluid cream, to markets not requiring milk of approved Chicago quality. Unapproved plants may engage for part of the month in the processing of a milk product such as evaporated milk or in the sale of fluid milk and fluid cream, while for the remainder of the month it may engage in the manufacture of other milk products such as butter and nonfat dry milk solids.

Under the adopted provision approved Chicago fluid milk received at the plant which commingles milk would be allocated first to the highest valued manufacturing use (Class III milk) then to the other manufacturing uses (Class IV milk) followed by use as Class II milk and Class I milk, respectively. Because of the relative importance of butterfat in cream, the allocation of approved fluid cream would be first to Class IV milk then to Class III milk, Class II milk, and Class I milk, in that sequence. Also approved fluid milk and fluid cream should not take precedence over unapproved or Grade B milk where the latter type of milk is disposed of for outside markets from such plants in the form of fluid milk or fluid cream. If monthly utilization records only are made available, approved fluid milk or fluid cream would be allocated in sequence beginning with Class I milk and Class II milk, respectively, to prevent approved fluid milk and fluid cream being reported in classes of lower value than the actual class of disposition, which would result in decreased returns to all producers. This is deemed necessary to protect the classification of producer milk.

An exception was filed to the effect that the proposed amendment was ambiguous and did not conform to the evidence. Certain changes in the text of the amendment have been made to clarify its meaning. It is concluded that the amendment as so modified reflects the pertinent evidence.

(5) Flavored milk, flavored milk drinks, and buttermilk should not be moved from Class I milk to Class II milk.

The classification of these products was changed from Class II milk to Class I milk by an amendment to the order effective September 1, 1946. In support of the proposal to change the classification of these products from Class I milk to Class II milk, it was claimed (i) that sales of these items decreased during the 4 months following reclassification to Class I milk as compared with the same period in 1945 and if continued producers' returns might thereby be reduced, and (ii) that the cost of flavoring ingredients has increased.

To be sold in the main segments of the Chicago marketing area these milk drinks must be made from inspected milk. They are disposed of in fluid form through the same retail and wholesale channels as bottled fluid milk and are used principally as a beverage. The physical characteristics, purposes, values, and uses of these items are more nearly similar to those of fluid milk than of items covered by the definition of Class II milk.

It was not shown that the decrease in sales following the amendment of September 1, 1946, was due to the reclassification of these products, since the trend had already started prior to reclassification and a general retail price increase embracing many other factors took place during the same period. Under the circumstances shown a decrease in sales of these products is not in itself an adequate reason for the reclassification proposed. The alleged cost increase of flavored ingredients (no specific information of these increased costs was shown) might be an element to be considered by the handler in the establishment of his margin but should not be charged against the price to the producer.

(6) The plant shrinkage provisions (§ 941.4 (b) (4) (iii) and § 941.4 (e) (6) (vi)) should be revised only relative to shrinkage on transfers of milk to unapproved plants by deleting the references to unapproved plants.

Proposals made were designed to (i) increase the over-all plant shrinkage allowance in Class IV milk, and (ii) alter the application of the plant shrinkage provisions to milk transferred to unapproved plants. It was proposed that the shrinkage allowance on butterfat received at an approved plant in the form of bulk fluid milk, bulk fluid skim milk, or bulk fluid cream be increased from 1.5 percent to 2 percent. This allowance would be in addition to the 0.5 percent allowance under the present order on butterfat in milk received directly from producers and would permit a total allowance up to 2.5 percent to the first handler. Also a second handler would be allowed by the proposal a maximum of 2 percent butterfat shrinkage in Class IV milk in addition to the shrinkage allowed in such class to the first handler. Under the proposal a maximum allowance in Class IV milk up to 4.5 percent of butterfat shrinkage would be possible if milk were handled by two or more handlers. In support of these increases it was pointed out that shrinkage may be enhanced by errors in butterfat testing or by the techniques used in such testing. A second proposal would revise language with respect to transfers of ap-

proved milk to unapproved plants to allow shrinkage in Class IV milk on such transfers.

The average shrinkage of butterfat, expressed as a percent of total butterfat pounds in producer receipts plus butterfat overrun (including that portion classified in Class I milk as "excess shrinkage" or "unaccounted for milk"), was stated to be 1.75 percent in 1943, 1.91 percent in 1944, 2.03 percent in 1945, and 2.18 percent in the first seven months and 1946. The average for this entire period was said to be 1.97 percent, or slightly less than the present maximum allowance. Such percentages have been computed by dividing total "shrinkage" pounds by the sum of producer receipts plus "over-run". According to the testimony this type of "over-run" results from the underreading of butterfat tests to producers or from the overreading of butterfat tests to purchasers. If such over-run is instead subtracted from these shrinkage figures, and the difference divided by total producer receipts, the net monthly average shrinkage for 1945 is 1.87 percent instead of 2.03 percent and the average for the first seven months of 1946 is 2.01 percent instead of 2.18 percent.

The "shrinkage" figures set forth above reflect butterfat unaccounted for for various reasons other than the loss of butterfat normally expected from the passage of milk through a plant. In view of the fact that the highest average percentage figure (2.18) presented is only slightly higher than the present allowance of 2 percent, it cannot be concluded that representative plant operations alone result in shrinkage which averages above 2 percent.

It was argued in the exceptions that because the average "shrinkage" of butterfat allegedly has increased from 1.75 percent in 1943 to 2.18 percent for the first seven months of 1946 the shrinkage allowance is inadequate in the light of actual market experience. To carry this argument to its logical conclusion could result in shrinkage allowances without limit as the volume of unaccounted for milk may increase for any reason. An increase in the shrinkage allowance on such a basis would enhance the possibilities of not accounting for all milk that should be accounted for, and any such allowance as proposed would increase the possibilities for inequities to arise among handlers. Therefore, an increase in the maximum shrinkage allowed in Class IV milk is not warranted.

Shrinkage for a system of plants operated by a single handler is computed as a net amount after accounting for utilization at all such plants. The first stated proposal would permit a greater shrinkage on milk moved from the plant of one handler to the plant of another handler as compared with interplant movements within a system operated by a single handler.

In light of these data and the inequities inherent in the first stated proposal, such proposal should not be adopted.

In support of the second proposal it was pointed out that in many instances handlers make sales of milk to unapproved plants. These sales to unapproved plants are not segregated in all instances from other route sales. To simplify the accounting for shrinkage with respect to milk moved to unapproved plants, the second proposal described under (ii) above should be adopted.

(7) The price differentials above the basic price for Class I and Class II milk should be revised to provide for (i) a wider seasonal variation in the uniform price to be paid to producers and (ii) an increase in the average level of price differentials above the basic price for Class I and Class II milk.

Under the present pricing provisions of the order, the Class I differential is 70 cents per hundredweight of milk, except during May and June when it is 50 cents. The Class II differential is 32 cents, except during May and June when it is 20 cents for such milk as is used for frozen cream. During the war years, the seasonal decline in the Class I differential for May and June was suspended but became effective again in 1947.

Three proposals were made to change the differentials for Class I and Class II milk. The first proposal provided for an increase in the average level of such differentials and a substantial increase in their seasonal variation, emphasizing both the shortage and surplus aspects of the problems of seasonal production. The second proposal limited the problem to the surplus aspects and favored a slight decline in the average level of such differentials. The third proposal provided for no change from the present order except that the seasonal decline in the Class I differential for May and June be eliminated.

The seasonal pattern of production is significantly different than is the pattern of demand for Class I and Class II milk, and during recent years the problems associated with these differences have become more acute than formerly. For the market as a whole, the average production per producer in 1940 was 42 percent greater during the month of peak production than during the month of low production; in 1946, it was 53 percent greater, which was the highest variation during the 1940–1946 period. The seasonal variation in production is much more pronounced in the far-out zones than in the close-in zones, with the intermediate zones showing an intermediate seasonal variation. In 1946, for example, Zones 1 and 2 produced 42 percent more milk per farm per day in the high month than in the low month, as compared with 54 percent for Zones 3 to 5, 70 percent for Zones 6 to 10, and 100 percent for Zones 11 to 21. In contrast, the market demand for Class I milk is relatively uniform throughout the year with the greatest strength generally exhibited during the autumn months. The demand for Class II milk, excluding the freezing and storing aspects of cream, is less uniform than for Class I, but is nevertheless much more uniform than the production of milk. One important feature of the seasonal problem in Class II milk is the freezing of cream during the months of peak production and its use during the months of lowest milk production. Frozen cream appears to be used principally in the manufacture of ice cream and its related products; it represents, therefore, at least a partial solution to the problem of bringing the supply and demand for milk into a better balance seasonally.

Beyond the relief obtained by freezing and storing cream, the seasonal supply and demand problem is subject to improvement through price incentives and educational influences. The role of education in correcting the problem of uneven production has been dealt with by agencies such as producer associations and agricultural colleges; but education alone has not been sufficient and a price incentive is required in addition thereto.

The proponents of the second proposal advocated a decrease of differentials in Class I and Class II milk during the flush production season and proposed that this season be extended by 1 month over that provided in the present order. In support it was said that the problem was principally one of milk surpluses during the spring months and that "there is an ample supply of milk in the fall months to satisfy the Class I and Class II requirements of the Chicago market if provision is made to channel the milk into the marketing area." The limitations of channeling milk into the marketing area are several. The amount of milk in excess of Class I and Class II milk is very small. Although outside sales represent a much more important volume of milk than is represented by such excess, the record does not adequately show how such milk could be channeled to the marketing area. Furthermore, the amount of milk being moved to other markets is not unrelated to the price structure for milk in the Chicago market; because such sales indicate that other markets can afford to compete with the Chicago market on a favorable basis. In further support it was shown that milk production during the low month of 1946 was 26 percent above the low month of 1940 and that the peak month of 1946 was 36 percent above that of 1940. It was contended that these data supported the statement that the problem of seasonal variation is not caused by insufficient fall production, but rather by too great a supply in the spring. This can hardly be accepted as a valid reason for a decrease in price differentials without considering the influence on price and production throughout the year. These same data demonstrate chiefly that the seasonal variation in production has become wider. While a lower price in the spring months may be expected to reduce the production of milk during such months, it does not follow that fall production will thereby become increased without further price incentives.

During the fall months of 1945 and 1946 the volume of milk in excess of Class I and Class II uses was substantially less than in previous years. The average amount of such excess for the 3-month period, September through November 1946, is less than 1.5 percent of total market uses and for 1945 slightly over 2 percent. In previous years this percentage ranged from about 7 to 19 percent, except for 1942 when it was 2.3 percent.

In general, a wide seasonal variation in production aggravates the problem of surpluses in the spring months and shortages in the fall months. Unit marketing costs tend to be lower with uniform milk production than with a wide seasonal variation in production. The increase in seasonal variation in milk production during recent years was attributed to the small variation in prices during the war years. A relatively high level of prices, such as now prevails, compared with a low level requires a relatively wider seasonal variation in prices as an incentive to producers to even out production.

The market needs for Class I and Class II milk have increased from an average of 138 million pounds per month in 1940 to 205 million pounds in 1946—an increase of 48 percent. Class I milk showed an increase of 50 percent and Class II milk an increase of 47 percent for that period. Total milk production for the market during this same period increased approximately 29 percent. This increase resulted from an increase in the average monthly number of producers by 1.6 percent and an increased production of milk per farm of 27 percent.

It was contended that the general level of prices should not be increased in view of the fact that the number of producers (based on preliminary data) increased especially during the latter part of 1946 and the first two months of 1947. In February, 1947, the preliminary number of producers was 18,118—the highest number on record; but this number is only approximately 2 percent higher than the number for February of 1941 or March, 1944, when there were, respectively, 17,726 and 17,767 producers on the market.

The amount of milk in surplus classes during the fall months must be considered as dangerously low in the light of data already indicated; actual deficits are indicated in the record which were apparently offset through the use of frozen cream. Adverse weather and crop conditions could easily place the market in a serious position of milk shortage.

Practically all costs incurred by producers in the production of milk such as feeds, supplies, labor, and equipment have increased during the past year. Prevailing prices for hogs, beef cattle, and other alternative enterprises open to most producers of inspected milk are at relatively high levels.

Although some producers may not have shared therein, premiums paid in the first two zones when applied against monthly deliveries from those zones averaged 4.8 to 6.5 cents per hundredweight of milk during the latter months of 1946. Premiums are shown to have been paid in greater and lesser amounts during the past three years in other zones.

Class differentials above the basic or manufacturing level of milk prices, in addition to meeting the cost of stricter sanitary requirements of inspected milk, should reflect also the competitive and other economic conditions affecting the supply of and demand for milk in the Chicago marketing area.

The Class I and Class II price differentials over the basic formula price, as set forth below, together with the Class III and the modified Class IV prices, will result in such prices as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest.

The Class I and Class II price differentials should be as follows:

[Amount per hundredweight]

Period	Class I	Class II
May and June	$0.50	$0.30
August, September, October, and November	.90	.50
All other months	.70	.40

The above schedule of prices substantially increases the seasonal variation of price differentials and may be expected to establish a better relationship between the supply of and demand for milk. It establishes larger and more definite incentives for producers to shift some of their milk production from spring to fall, and it may also influence the seasonal demand if these differentials are reflected in consumer prices. It may also be expected that the future development of new supplies will be somewhat responsive to the seasonal aspects of price regardless of location and result in a more even seasonal production for the market than now prevails.

The general level of Class I milk price differentials is increased by approximately 3 cents over the differential prevailing during the war years, and by about 7 cents over the average level now in the order.

The general level of Class II price differentials is increased by approximately 10 cents over the differentials now in the order. The difference between the Class I and Class II price differentials has been reduced from approximately 38 cents to approximately 31 cents; this reduction will have the effect of placing the price of Class II milk closer to the uniform price and therefore will relieve somewhat the burden placed upon the price of Class I milk in maintaining or developing a desirable uniform price. Both classes of milk require the same standard of health regulation.

The effect of the recommended price schedule, when related to handler and producer location adjustments, is such that at the 21st zone the average annual price of Class I milk will be about 40 cents per hundredweight above the basic price as compared with a Class II average price of about 37–38 cents per hundredweight of milk above the basic price. This places the most distant zone in which milk is received from producers in the position of being in an almost neutral price position on Class I and II milk but with a slightly higher average price on Class I than on Class II milk.

The Class II milk price differentials as recommended above, provide for 30 cents in May and June as compared with 50 cents for August–November; this allows a 20 cent minimum margin for the storing and freezing of cream. This is an increase of 8 cents above the present order and slightly more than the alleged costs of freezing and storing. It should therefore provide considerable incentive toward freezing cream and help to alleviate seasonal problems.

It may be estimated that the increased differentials on Class I and II milk together with the recommended reduction in the Class IV price will result in an increase of about 4.5 to 6 cents in the uniform price depending upon the percentage of milk in each of the several classes.

(8) The basic formula price provisions should be revised.

(i) One proposal for revision of the Class III formula price provision (alternate basic formula price) would add to the list of manufacturing plants set forth in § 941.5 (a) (1) the names and locations of 5 additional plants. The expressed intent of this proposal is to make such plant list more representative in providing prices for the computation of the basic formula price. Another proposal suggested the addition of 12 more plants in addition to such 5 plants.

The proponents of the proposal to add the group of 5 plants to the list indicated an objection to the elimination of the Michigan plants now in the list, although their testimony indicated also that to follow the logic behind the proposal to add the 5 Illinois plants would call for the deletion of the 5 Michigan plants. Appraisal of the testimony leads to the conclusion that the single action of adding the 5 Illinois plants would do little to improve the present Class III price formula and that there are a number of factors involved which should be considered before any revision of this formula is made. Although no direct challenge to the group of 5 plants was made by others, the proponents have not presented convincing evidence that an improvement in the formula as an index of evaporated milk plant prices would result from their inclusion.

The record does not disclose the effects which the 12 other plants suggested would have upon the present Class III price and there is practically no information in the record concerning their operations as to whether they are primarily manufacturing plants. The evidence is not sufficient to support the inclusion of the 12 latter plants. It is recommended that the suggested revision of the list not be made until there is an opportunity to make a more complete analysis of the effect of these or similar changes.

(ii) The butter-nonfat dry milk solids formula price (hereinafter referred to as the Class IV milk price) should be revised.

The proposal to revise the Class IV milk price formula would reduce the price by about 15–16 cents per hundredweight of milk. The revision would be accomplished by reducing in the formula the market price of 92-score butter by 1 cent and the net average price of nonfat dry milk solids by 1½ cents per pound. The argument for a reduction in the Class IV price is based upon two points: (1) That the price of surplus milk under an order "should be at a level which would permit the handler to re-

cover his normal costs of operations but upon which he shall not be given an undue margin of profit"; and (2) that the present formula price is too high to enable handlers to recover their costs on Class IV milk.

Costs of manufacturing whole milk into butter and nonfat dry milk solids, as testified to at the hearing, ranged from 43 cents to 70 cents per hundredweight of milk. The proponents of the lower Class IV price claimed average costs of 57.7 cents per hundredweight of milk, based on a survey of 4 plants, two of which were said to operate at 50–51 cents and the other two at 60.4 and 69.5 cents. Manufacturing costs assigned to butter and nonfat dry milk solids appear to vary widely, depending on individual plant efficiency and on cost accounting practices. Although not referred to at the hearing, cheese, as well as butter and nonfat dry milk solids, is included in the definition of Class IV milk.

It was contended, in substance, that under the present Class IV milk pricing formula handlers receive a "manufacturing" allowance of 37.5 cents per hundredweight of milk, this being computed on the basis of a yield factor of 7.5 pounds of nonfat dry milk solids multiplied by the five cent factor in the formula. Actually handlers of Class IV milk realize a working margin of something more than that amount. Under the existing formula no positive value is given to skim milk until the price of nonfat dry milk solids reaches a full ½ cent over 5 cents per pound. The handler is thus allowed up to 5.49 cents rather than 5 cents per pound of powder. This amounts to as much as an additional 3.5 cents per hundredweight of milk. The record shows that actual butter "overrun" approximates 21–22 percent rather than the 20 percent factor used in the butter part of the Class IV formula. This would amount to another 2 to 4 cents margin to the handler on the basis of the current butter market. The record also shows that the actual yield of nonfat dry milk solids are in excess of the 7.5 pound factor referred to above by at least ½ pound per hundredweight of whole milk. Under prevailing market conditions this provides an additional margin to the handler of not less than 4.5 cents per hundredweight of milk. When these factors are taken into account the actual operating margin on Class IV milk used for butter and powder appears to be approximately 48 cents per hundredweight of milk rather than 37.5 cents.

It was claimed further that the present formula fails to recognize the cost of transporting butter between a country plant and the Chicago market. However, it was shown that butter manufactured from Class IV milk under the Chicago order is premium butter both as to price and quality.

In establishing a proper price for Class IV milk the handler's costs and the element of profit to the handler may not be considered as controlling to the exclusion of other important considerations. The pricing of Class IV milk, as well as of the other classes, must take into account seasonal variations in production and the need for adequate supplies of milk and cream in fluid form for the market at various times of the year. The pricing of Class IV milk should not encourage the use of milk for manufacturing purposes during periods when it can and should be used for purposes which better serve the interests of the producer and of the consumer in the Chicago marketing area. In this connection the supply problems presented by proponents of the "pool plant" proposal (Issue 13) would be accentuated and rendered more serious if handlers received an even greater price incentive to use milk for Class IV purposes during periods when the milk is needed to meet fluid milk and cream requirements. However, the pricing of Class IV milk should permit the use of milk for manufacturing uses during those months of the year (March, April, May, and June) when the disposition of surplus milk in this market can be expected to present problems for individual plants and when a serious marketing situation may occur unless the surplus milk is effectively disposed of in an orderly manner. To price Class IV milk without due regard to these factors would be contrary to the basic principle that milk prices under a marketing order should be so adjusted as to "insure a sufficient quantity of pure and wholesome milk and be in the public interest."

Taking all of the above considerations into account, it is concluded that the Class IV price should not be modified except for the months of March, April, May and June. As to those four months the Class IV price formula should be modified by increasing the present five-cent factor on nonfat dry milk solids to six cents. During those four months, when the volume of milk in Class IV uses normally may be expected to be greatest, the margin to handlers using milk to make butter and nonfat dry milk solids will thereby increase to about 55–56 cents per hundredweight of milk. Any further revision of the Class IV price formula would appear to require additional inquiry and supporting evidence.

The fact that the Class IV price formula has been modified to recognize only two periods, or seasons, during the year for pricing purposes is not deemed to be inconsistent with the Class I and Class II price formulas which contain three periods, or seasons, during the year. Sufficient differences exist in the volume of milk among classes and in the purposes served by the different classes and by their prices to warrant the distinction thus made.

(iii) In the order currently effective, the basic formula price is the highest price computed from three manufacturing milk price formulas based, respectively, on the "paying" prices of several evaporated milk concerns, open market prices of butter and cheese, and open market prices of butter and nonfat dry milk solids for the current delivery period. Two proposals to change the application of these formulas have been made. Under the first, the highest prices resulting from the respective formulas for the current delivery period and that next preceding would be averaged and used as the current basic formula price. Under the second such proposal, the highest price resulting from these manufacturing milk formulas for the delivery period next preceding (formerly the basic formula price for such delivery period) would be used as the basic formula price for the current delivery period. The first proposal was suggested for the purpose of reducing somewhat the monthly variations in Class I milk and Class II milk prices and to enable handlers to estimate more closely in advance the level of such prices which they would be required to pay in the current delivery period. The second appears to be designed to enable handlers to know with certainty their purchase prices for Class I milk and Class II milk by the fifth day of the delivery period during which the milk is received.

Under the present order, class prices are not known until approximately the fifth day after the end of the delivery period during which the milk is received. Handlers complain that they are disadvantaged by not knowing the Class I and Class II milk prices they will have to pay for milk received from producers until after that milk has been disposed of by them.

More orderly marketing of fluid milk and fluid cream may be encouraged by the announcement of the Class I and Class II prices early in the delivery period during which milk covered by such classes is disposed of by handlers. For this reason the proposal to base such class prices upon the manufacturing milk formula prices for the next preceding delivery period is adopted with the conditions that the basic formula price effective for July shall not be less than that for the preceding month of June, and the basic formula price for December shall not be higher than that for the preceding November. The latter conditions are considered necessary to assure the proper seasonal trend of prices.

Substantial quantities of Chicago approved milk are disposed of in the form of manufactured milk products covered by the Class III milk and Class IV milk definitions under the order. The latter products, although made from Chicago approved milk, are in open market competition with similar products from milk not meeting any formal health inspection. Because of competitive character of the markets for the products covered by Class III milk and Class IV milk, the prices for the latter classes should continue to be based upon the manufacturing milk formula prices for the current delivery period rather than for the next preceding delivery period.

(9) The rates of location adjustment credits to handlers for fluid milk or fluid skim milk shipped from country plants to the marketing area and on certain Class I milk not so shipped should be increased; the rates on fluid cream should not be increased.

(i) No zone adjustments on fluid milk and fluid skim milk were proposed for Zone 1, and none are allowed under the present order. It was proposed that the present rate of 1½ cents per hundred-

weight of milk be increased to 2½ cents for each 15-mile zone beyond the 70-mile zone (Zone 1). This proposed rate was determined by subtracting a claimed 13-cent rail rate for Zone 1 from a claimed 62-cent rate for Zone 21, and dividing the result by 20, the number of zones involved. This resulted in a rate of 2.45 cents per hundredweight of milk. Only one location within the 79-mile zone (Zone 1) was shown to have a rail rate of 13 cents. The average of several locations in Zone 1 was shown as 28 cents, and in Zone 2 as 29 cents. All truck and rail tariffs shown apply between zones or points of origin and the City of Chicago. Rail tariffs approved by the Interstate Commerce Commission have been increased at least 15 percent since September 1, 1946, the date on which the last amendments to zone rates to handlers were made effective under Order 41.

Most fluid milk and fluid skim milk are hauled by truck. Trucking tariffs to the marketing area appear to be higher than rail tariffs on long hauls, but lower on short hauls. Hauling tariffs by truck were shown to be 16 cents per hundredweight in Zone 1, 18 cents for Zone 2, with rather uniform increases at 2 cents for each zone thereafter. However, beyond Zone 14 rail tariffs are somewhat lower than trucking tariffs, and should receive consideration since it appears that not all milk moves by truck. It is economically desirable to secure the necessary fluid milk from the nearest possible sources. Location adjustment credits should enable the movement of the necessary quantities of milk for Class I use but should not be high enough to encourage the uneconomic movement of fluid milk or to place an undue burden on the returns to producers. It is concluded that a rate of 2 cents per hundredweight per zone between 70 and 265 miles from the marketing area and a rate of 1 cent per hundredweight per additional zone beyond will assist in this objective.

It was requested in the exceptions that official notice be taken of certain percentage increases in rail tariffs relating to the transportation of milk which were alleged to have become effective about March 27, 1947, and that allowance for such increases be made in the establishment of location adjustment credits in the order. Inquiry into such increases based upon the information supplied fails to disclose their existence. Therefore, this request is denied.

(ii) Two proposals were submitted to change the current method of arriving at location adjustment credits to handlers on fluid cream. One proposal would adopt LCL rail tariffs from country plant locations beyond Zone 1 to the perimeter of Zone 1. The second would apply the "effective tariff rates" from the point of origin to the marketing area. Neither proposal contemplates any change in the present provision under which no location adjustment credit is allowed on fluid cream originating within the 70-mile zone.

It does not appear that LCL railroad tariffs from plant locations beyond Zone 1 to the perimeter of Zone 1 are or will be regularly established in connection with shipments of cream to destinations within the marketing area. The first proposal to change the present method of arriving at location adjustment credits on cream, therefore, would appear to be infeasible and is not warranted on the basis of this record.

The second proposal provides for a zone rate of ¾ cent per hundredweight of milk shipped to the perimeter of the 70-mile zone in the form of fluid cream. However, this proposal was modified by a request that the rates "shall be the effective tariff rates applicable on shipments of cream in cans from the zone and the point of origin to the Chicago marketing area and that such rates be secured and published by the market administrator." The basis for the ¾-cent rate was not indicated, nor was the meaning or application of "effective tariff rates" satisfactorily developed in the record. Although the record indicates that LCL rates from country plants to points within the marketing area, as referred to in the exceptions, are available, it would not be equitable to utilize such rates for locations outside the 70-mile zone, since plants within the 70-mile zone have no similar allowances for the transportation of the cream to the marketing area.

The application of rates in this second proposal to shipments of fluid cream from beyond the 70-mile zone to the marketing area instead of to the 70-mile perimeter would permit serious inequities. For the above reasons, neither feature of the second proposal should be adopted.

(10) The proposed 4-cent butterfat differential applicable to fluid milk sold as Class I milk testing above or below 3.5 percent of butterfat should not be adopted.

This proposal would have the effect of placing a price on butterfat which is in excess of 3.5 percent in fluid milk sold as Class I milk of 4 cents per point. This is substantially lower than the current price of butterfat for any use including butter, the lowest-valued use under the order. Under the proposal the market pool would subsidize the butterfat in excess of 3.5 percent disposed of in Class I fluid milk. No adequate reasons have been presented to show why these results should prevail.

The exceptions filed to these findings and the conclusions also argue that some of the marketing orders for other areas provide fixed butterfat differentials. The provisions of other orders which are based on conditions in the respective markets and on other hearing records can carry litttle weight in arriving at a proper butterfat differential for the Chicago market, particularly when, as here, no showing of similarity of conditions in the markets was made.

(11) The method of pricing Class I milk disposed of in markets outside the Chicago, Illinois, marketing area should not be changed.

It was proposed that the price of Class I milk disposed of in any market outside the marketing area should be the "price as ascertained by the market administrator which is being paid for milk of equal grade and of equivalent use in the market where such milk is disposed of." Another proposal would limit such "ascertained prices" to the months of January through July, inclusive, with a fixed minimum of 45 cents over the basic formula price, and would apply a similar pricing principle to Class II milk disposed of outside the marketing area.

Milk approved for Chicago distribution is sold in several markets outside the marketing area. Some of this milk is sold under resale price levels lower than those in the marketing area. A portion of such milk is sold in markets having Grade A health standards similar to the City of Chicago, while some is sold in markets having less stringent health standards.

The price effective under the Chicago order should be such as to induce a supply adequate to meet the demand of the Chicago marketing area but not to fulfill the requirements of outside markets where milk of lesser quality may be used. The Chicago market does not have an excessive supply of milk except for a certain amount of seasonal surplus, which is not uncommon to the market. If Chicago approved milk is permitted to be sold in outside markets at less than the price prevailing in the marketing area, the result is a subsidizing of the outside sale. The proposal that the outside sale of Class I milk and Class II milk be permitted at a lower price only during the months of January through July, inclusive, when milk is relatively plentiful on the Chicago market, as a convenient method of disposing of seasonal surpluses which might otherwise fall into even lower-priced uses, should not be adopted because of the resulting "dumping" effect on the outside market. In addition, the fixing of the proposed lower prices for Chicago milk sold in other markets could have a depressing effect on the prices paid farmers by competing unregulated distributors in such markets, which lower prices in turn might further depress the "ascertained prices" to be used under the Chicago order.

Moreover, prices paid by individual distributors within a single outside market often vary greatly and the standards and methods by which the market administrator would ascertain the price being paid in the outside market for milk of equal grade and of equivalent use were not outlined. From the administrative viewpoint, it is considered undesirable to burden the market administrator with the responsibility of determining outside market price levels in such circumstances.

The discussion of the pricing of milk used in making ice cream (Class II milk) brought forth a proposal for placing an "out-of-area" price on such milk. The above reasoning is applicable to such proposal also. However, other pertinent findings in this connection are discussed under conclusion (12).

(12) A special storage allowance for storing frozen cream should not be included.

It was proposed that the price formula for Class II milk should include a storage allowance for frozen cream stored. In connection with the discussion of this proposal the proponents made a further proposal to place an "out-of-area" price on milk used in making ice cream to be sold outside the marketing area which

would be lower than the price of Class II milk disposed of in the marketing area.

Cream is frozen by Chicago handlers in the months of relatively heavy milk production as supply insurance for months of relatively light milk production. Order No. 41 currently allows an automatic decrease of 12 cents per hundredweight on frozen cream in May and June, but cream for fluid use is not subject to a lower seasonal price differential in May and June. Costs incurred in freezing and storing cream are alleged to approach 20 cents per hundredweight of milk.

It has been determined under conclusion (7) that a seasonal price plan should be established for both Class I milk and Class II milk. The total amount of the seasonal change in the price differential from the May and June level would be 20 cents per hundredweight for Class II milk. The increase in July from the June level would be 10 cents per hundredweight and an additional increase of 10 cents per hundredweight would be effective for the months of August to November, inclusive. In addition it is usual to expect a somewhat higher basic formula price in the fall months than prevails in the months of May and June. Since the expense of freezing and storing cream does not exceed 20 cents per hundredweight of the milk used to produce such frozen cream it would appear that the person incurring such costs would take, under this seasonal price plan, little, if any, risk in protecting his fall supply of cream for ice cream manufacture. This price plan permits him to buy cream for later use at a relatively low price in the summer months and should give an adequate incentive to cream storage rather than to discourage it. An additional allowance of 17 cents per hundredweight is unnecessary in view of the seasonal price plan proposed.

Cream for disposition in the form of ice cream in the City of Chicago must be made from Chicago inspected milk. Ice cream for disposition outside the City of Chicago may be made from cream produced under less rigid health inspection requirements. Chicago ice cream manufacturers sell ice cream both in the City of Chicago and in outside markets, some of which are beyond the limits of the marketing area. Chicago handlers selling in markets adjacent to the marketing area consider that they are in an unfavorable competitive situation in such markets with ice cream makers not regulated by Order No. 41.

Chicago ice cream manufacturers may compete for business in markets where ice cream makers do not maintain Chicago inspection, but such outside ice cream makers may not compete for ice cream business in the City of Chicago. The Chicago ice cream maker operates with respect to the bulk of his ice cream sales on a market protected against outside competitors not handling Chicago approved ice cream. Chicago producers are producing primarily for this inspected market and have pointed out the need for additional supplies of milk on the Chicago market at certain times of the year. Prices for Chicago milk should be designed to bring forth a sufficient supply of milk to meet the demands for which inspected milk is required, but not to create undue surpluses of high quality milk or to provide supplies for milk products to be sold in other markets where different price and supply conditions call for different purchase prices.

Although exceptions were taken to the above stated conclusion and to the omission of an "out-of-area" price for milk used in ice cream for sale beyond the marketing area, no change in such conclusion appears warranted. Concerning the omission of an "out-of-area" price on milk used in ice cream the general basis for denying an "out-of-area" price for Class I milk, set forth under conclusion (11), supplements the pertinent findings above.

(13) The "approved plant" definition should not be changed; and new provisions for (i) establishing additional requirements for continued pool participation by plants now eligible for inclusion in the market-wide pool and (ii) the suspension of pool plants under certain conditions, should not be adopted at this time.

Producer proponents of the proposal for establishing more stringent requirements on plants with respect to pool participation support their proposal by alleging the failure of certain pool participating plants to ship fluid milk and fluid cream in the months of short production when substantially all available supplies of approved milk are needed in the Chicago market. It was pointed out that plants desiring to receive the year around benefit of a uniform price, which includes in all months the total value of Class I and Class II milk sold on the market as well as the values of the other classes, should recognize an obligation to furnish the market with fluid milk and fluid cream whenever it is needed even though in most months of the year such plants may be engaged primarily in manufacturing operations such as the processing of evaporated milk, butter, powder, or cheese. The particular proposal offered attempts to establish standards of performance with respect to the shipment of milk and cream to be made by each and every handler to remain in the market pool.

Plants commonly considered as "Stand-by plants" which are primarily engaged in manufacturing operations but which have entry into the pool at all times of the year do carry at least a moral obligation to furnish their total pool supply to meet the higher-valued uses if and when it is necessary. This obligation accrues from the benefit which such plants receive throughout the year in the form of price equalization which enables them to pay producer prices equal to those paid by strictly fluid milk plants similarly located. The problem proposed can admittedly become serious and irksome in a fluid milk market. However, it has not reached the stage in the Chicago market where the suggested type of remedy or one of equal force is imperative. In addition, the proposal at hand does not cover the problem completely and leaves many questions to be answered, especially regarding its administrative practicality. Because of these considerations, it is concluded that the suggested pool plant provisions should not be adopted at this time.

(14) The pool treatment of the classified value of frozen cream should not be revised (§ 941.7 (b) (3)).

Under the proposal there would be set aside from the pool the difference between the value of frozen cream at the Class II price and its value at the Class IV price for the delivery period in which such cream is frozen, such difference to be returned to the pool during the delivery period in which the frozen cream is utilized.

The proposal seeks to implement seasonal pricing. It must be recognized that it is but one method which may be employed for this purpose. The proposal was not developed sufficiently at the hearing as to (i) its adaptability for this purpose in preference to other methods, and (ii) administrative problems involved in making the proposal operative, such as whether a special reserve fund would be necessary and how it should function, the relation of this proposal to the inventory aspects of classification and pricing, and the reconciliation of volumes of frozen cream when placed in storage with volumes moved from storage at a later date.

An exception was taken to the conclusion reached on the proposal, but in view of the above considerations the adoption of the plan suggested by the proposal is not warranted on the basis of this record.

(15) The location adjustments applicable to the producers' uniform price should be revised.

The order provides for the announcement of the uniform price per hundredweight of milk received from producers at plants located not more than 70 miles (Zone 1) from Chicago. Beyond this distance the uniform price is subject to location adjustments. These deductions are 2 cents per hundredweight of milk for each subsequent 15 mile zone up to 175 miles and ½ cent for each 15 mile zone thereafter. Since the order was first made effective in September 1939, no changes have been made in these rates. The only interim change with any bearing on location allowances was the adoption, by amendment, of road and rail miles instead of air miles in determining the zone location of plants. Under the present structure, the location adjustment rate to producers parallels, up to a distance of 175 miles from the market, the transportation rate allowed handlers for shipping fluid milk; thereafter the rate of adjustment approximates that allowed for transporting fluid cream.

It was contended on behalf of certain organizations that the present location adjustment rates discriminate against the far-out producer and favor the close-in producer. In support it was shown, for example, that in 1944 location adjustments to handlers for milk received beyond the 70 mile zone totaled about $350,000, whereas location adjustments for producers in the same zones totaled about $650,000. The difference of about $300,000 was described as a "tribute" paid by distant producers to close-in producers. It was proposed on these facts that the producer location adjustments should be equivalent to the present

rate of adjustment to handlers for fluid milk shipments, or 1½ cents per hundredweight, for each 15 mile zone beyond the 70 mile zone up to a distance of 130 miles from the marketing area and beyond that at a cream rate of ¼ cent per hundredweight per zone. It was proposed further that the 1½ cent rate should drop to 1 cent whenever the accumulated excess of total handler adjustments over total producer adjustments exceed $50,000 and should be restored again to the 1½ cent rate when such excess drops below $25,000. The effect of these proposed rates on producers' uniform prices per hundredweight at the extreme outside and the extreme inside zones would be (i) an increase in the 21st zone (355–370 miles from Chicago) by 10 to 12 cents in relation to the uniform price for the 70-mile zone, and (ii) a decrease in the uniform price in the 70-mile zone of approximately 2 to 3 cents, with proportionate effects on the intermediate zones.

The basing point for class and uniform prices is the 70-mile zone. Handler location adjustment credits are made primarily in recognition of differences among handlers as to sources of supply of milk and cream and should provide, within reasonable limits, uniformity in prices at the basing point. The application of such credits depends entirely upon the disposition of milk received. Much milk received in zones beyond Zone 1 does not become eligible for such credits. However, producer location adjustments are applicable to all milk received in all zones beyond Zone 1.

A comparison of dollar differences between the total of such handler credits and total of producer adjustments, therefore, has little significance in dealing with the problem of fixing appropriate rates of location adjustments to producers. The principle employed by the proponents of the changed rates to producers when carried to its logical conclusion, means that when no location adjustment credits are allowed to handlers, there shall be no location adjustments made to the uniform price paid to producers. In other words, producers located beyond the 70-mile zone would receive the highest uniform prices, relative to the prices received by producers in the 70-mile zone, when the former group ships no fluid milk or fluid cream to the marketing area. Conversely, as shipments of fluid milk or fluid cream made from distant points increase, with accompanying increases in the dollar value of handler location adjustment credits, the uniform prices received by distant producers would become relatively lower than the prices received by close-in producers. Such a result would certainly be inequitable.

Moreover, producer location adjustments affect the uniform price in each zone. The claim of discrimination against far-out producers deserves analysis in this respect also. Zone 21 is the most distant zone from the market in which approved plants are located at present. A comparison of the uniform prices with class prices in Zone 21, 1940–46, inclusive, discloses that if Zone 21 had sold all of its milk for Class I use in Chicago or elsewhere during each month of that period such milk would have drawn money from the pool during 31 out of 84 months because the Class I price in the 21st zone was lower than the uniform price. It may be noted in addition that Class II milk, which is the principal type of milk furnished to the market by most far-out plants, was priced below the uniform price in Zone 21 during 49 months out of 84. During the year 1946, Class II milk in such zone was priced under the uniform price during every month, and the Class I price in that zone was lower than the uniform price during the 7 months of the year. Actually, most of the Class I milk for the market came from close-in zones causing these zones to pay into the pool and thereby enabling Zone 21 and other far-out zones to draw even more out of the pool than would result under the above illustration. Under the proposed rate structure described above, the relationship between the Class I and Class II prices and the uniform prices in the outer zones would be further aggravated.

The assertion of discrimination made does not withstand the above considerations.

It was proposed by one producer organization that the rate of location adjustment to producers should be closely related to the cost to the individual producer of moving his milk to the marketing area independently of other producers and that this cost should be uniform amount for each zone. This proposal was restated to the effect that producer location adjustments should have the same rate that applies to fluid milk shipped by handlers. It was contended also that the proposal for lower location adjustments to producers might result in a uniform price to producers in a distant zone which is higher than the Class I price for that zone. In reply to this statement, the proponents of the lower rates of location adjustments to producers argued that "there is no way under Order 41, if the proposed amendment (for a lower rate) were adopted, by which producers in distant zones could secure higher than Class I prices." However, the latter statement may not be sustained since it has been shown above that even under the rate structure in the present order the Class I price in the 21st zone at times actually has been below the uniform price for such zone and that a lower rate of location adjustment to producers in such zone and other far-out zones would aggravate this situation.

Because of the relationships of prices indicated above, it is desirable to revise rates of location adjustment to producers in a manner which will establish improved price relationships throughout the milkshed. Milk for use as both Class I milk and Class II milk must conform to the same health standards and must be produced on farms meeting the same minimum health standards. Because of transportation costs, efficient marketing is promoted by securing milk for fluid use as near to the market as possible. The present rate structure provides a strong incentive for uneconomic development of the supply area. Although it is recognized that from the practical standpoint the entire requirements of milk for fluid use cannot be produced in the most compact and close-in areas, advantages from location which naturally accrue to nearby producers should not be removed to the extent that an uneconomic development of the supply area for fluid milk results.

Because the availability of approved milk in fluid form is a major element in determining its utility in relation to the needs of the marketing area, the cost of transporting such milk in fluid form from the particular zone must be given substantial weight in arriving at a proper zone price relative to prices of milk of other producers closer to or farther away from the marketing area. It is recognized that it is not necessary for producers to move milk individually to the market and that transportation economies are effected by the assembly and movement of milk by truck or rail either at the instance of the handler or of producers acting jointly. Under present conditions the rates of location adjustment to producers should be established on the basis of the cost of moving milk in fluid form to the market.

This would result in a rate structure of 2 cents per hundredweight per zone for zones 2–14, and an additional 1 cent for each zone thereafter. It is estimated that this proposed rate structure would affect the average annual uniform prices to producers as follows: (i) in the first 8 zones such prices would be increased approximately 1 cent per hundredweight compared with the present rate structure, (ii) in the 9th zone a net decrease in such prices of ½ cent per hundredweight, (iii) net decreases of 2, 3½, 5, 6½, and 8 cents per hundredweight for zones 10, 11, 12, 13, and 14, respectively, and (iv) from the 15th zone to the 21st zone net decreases from 8½ cents to 11½ cents per hundredweight.

Exceptions filed to the economic considerations presented appear to be based upon theories and argument which are at variance with the need for the establishment of more equitable price relationships to producers based upon the cost of moving milk to the marketing area from the relative locations of their farms and for this reason cannot be accepted on the basis of the existing facts.

One exception carried with it the suggestion that a "floor" be placed under the maximum uniform price to producers in the far-off zones. It does not appear that this proposal would provide as equitable a method of establishing prices in such zones in relation to those effective for the nearer zones as for the plan contained in the amendment included in this decision.

Exceptions also argued that the proposed action is unlawful under section 8c (5) (G) of the act. There is nothing in this amendment which purports to prohibit or to in any manner limit in the case of the products of milk, the marketing in the Chicago marketing area of any milk or product thereof produced in any production area in the United States. As stated previously the amendment merely revises location adjustments to producers so as to provide

more equitable price relationships among producers throughout the milkshed.

(16) Several revisions of language should be made to obtain further clarity and to simplify administrative problems.

(i) In determining the butterfat test of flavored milk and flavored milk drinks the average fat test of these products, including the fat test of chocolate ingredients, should be used as their butterfat test in all cases where a handler's production records do not show the amount of butterfat going into the product (§ 941.4 (e) (3) (iii)).

The order now provides that in determining the pounds of butterfat in flavored milk and flavored milk drinks the weight of these products is multiplied by their average butterfat test. It has been contended in some instances that a variation exists between the total fat test of the finished product and the butterfat test thereof. A representative study by the market administrator showed that the difference between the butterfat test of the milk ingredients and the total fat test of the finished product was insignificant. The procedure presently being followed by the market administrator is to use the total fat test of flavored drinks as their butterfat test in the absence of adequate records showing a different butterfat test. The proposal will specifically spell out this method in the order. Where a handler's records show the amount of butterfat going into these products, such records have been accepted and will continue to be accepted under the proposal.

(ii) In computing the net class volumes of milk to be priced currently, the milk equivalent of any frozen cream, or other intermediate product, carried over from a previous delivery period and used in making another milk product should be deducted (§ 941.4 (f)).

Milk products which are not end products in themselves are classified and priced during the delivery period when made. It is necessary to deduct the milk equivalent of butterfat in such products from the appropriate uses for the delivery period when such products are finally used to make other products in order that a handler will not be charged twice for the same milk. This procedure is administratively necessary and has been followed in the past by administrative application of the classification provisions.

(iii) A butterfat allowance of .06 percent should be provided to handlers who are not able to show specific tests as to butterfat content of skim milk.

There has been an administrative problem with respect to the determination of the butterfat content of skim milk. Some handlers do not have testing equipment adequate to ascertain with reasonable accuracy the butterfat content remaining in skim milk after separation. Handlers with adequate records have been permitted to claim butterfat in skim milk. A study by the market administrator indicates an average butterfat content of approximately .06 percent for skim milk used by handlers in manufacturing dairy products. It appears that .06 percent is a reasonable factor for use in the absence of adequate tests or records. Butterfat in skim milk may be a substantial factor in the shrinkage experienced by a plant engaged primarily in receiving and separating milk and shipping cream to the marketing area.

The proposed amendment would relieve an administrative problem and would tend to bring about a greater degree of equity among handlers in determining the butterfat content of skim milk.

(iv) The section providing for an assessment on handlers covering administrative expenses should be revised to (*a*) provide that changes in the administrative assessment rate below the maximum fixed in such section shall be determined by the Secretary rather than by the market administrator subject to review by the Secretary, and (*b*) eliminate suits by the market administrator to collect such assessments.

Procedure for making changes in such rates will be less complicated if such ratemaking is a direct function of the Secretary rather than a review function. This revision will simplify the establishment of appropriate rates of assessment at any time the assessment rate should be changed.

Section 941.9 (b) is unnecessary because the Secretary currently assumes responsibility for enforcement of the payment of such assessments.

(v) The section providing for the marketing services deductions should be revised to provide that changes in the rate of marketing services deductions below the rate specified in such section shall be determined by the Secretary rather than by the market administrator subject to review by the Secretary.

The fixing of the rate of marketing services deductions by the Secretary (who now reviews the rate established by the market administrator) will simplify the procedure for establishing such rate of assessment below that specified in the order when a change in the rate is necessary.

(17) *General findings and conclusions.* (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and order, as amended and hereby proposed to be further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which the hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area" and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order, amending the order, as amended, which will be published with the decision.

§ 941.0 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(a) The said order, as amended, and as hereby further amended,[1] and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said order, as amended, and as hereby further amended, regulates

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

The foregoing findings are supplementary and in addition to the findings made in connection with the issuance of the aforesaid order and the findings made in connection with the issuance of each of the previously issued amendments thereto; and all of said previous findings are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings set forth herein.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Chicago, Illinois, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. Delete § 941.4 (a) (2) and substitute therefor the following:

§ 941.4 *Classification of milk*—(a) *Basis of classification.* * * *

(2) Any milk moved as fluid milk from an approved plant to any point located outside the following area (hereinafter referred to as the "surplus milk manufacturing area") shall be classified as Class I milk and any milk moved as fluid cream, frozen cream, other cream frozen, plastic cream, or any cream product in fluid form shall be classified as Class II milk; the State of Wisconsin; the counties of Stark, Marshall, Woodford, Livingston, Ford, Iroquois, Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Lake, Carroll, Ogle, DeKalb, Kane, Cook, DuPage, Whiteside, Lee, Rock Island, Henry, Bureau, Putnam, LaSalle, Kendall, Grundy, Will, Kankakee, Peoria, McLean, Champaign, and Shelby, in the State of Ilinois; the counties of Benton, White, Cass, Miami, Howard, Carroll, Tippecanoe, Tipton, Clinton, Fountain, Warren, Parke, Vermillion, Vigo, Sullivan, Lake, Newton, Porter, Jasper, LaPorte, Starke, Pulaski, St. Joseph, Marshall, Fulton, Kosciusko, Wabash, and Elkhart, in the State of Indiana; the counties of Ottawa, Kent, Allegan, Barry, Calhoun, St. Joseph, Van Buren, Kalamazoo, Cass, and Berrien, in the State of Michigan; and the county of Van Wert, in the State of Ohio.

2. Delete § 941.4 (a) (3) and substitute therefor the following:

(3) Any milk moved as fluid milk or fluid cream from an approved plant to an unapproved plant located within the surplus milk manufacturing area, which manufactured during the delivery period butter, cheese (except cottage cheese), evaporated milk, condensed milk, whole milk powder, or ice cream powder shall be classified under paragraph (b) of this section according to its utilization at the latter plant, as shown by adequate daily records: *Provided,* That (i) if in the unapproved plant the receipts of fluid milk or fluid cream from an approved plant are commingled with its other receipts, the receipts of the approved fluid milk shall be allocated, according to such daily records, to the available quantity of Class III milk, and any remaining balance of such receipts to the available quantities of Class IV milk, Class II milk, and Class I milk, in that sequence; and any such receipts of approved fluid cream shall be allocated in a similar manner to Class IV milk, Class III milk, Class II milk, and Class I milk, in that sequence; and (ii) if the unapproved plant does not make available to the market administrator adequate utilization records on a daily basis, but does make available to the market administrator adequate utilization records on a monthly basis, the fluid milk received from an approved plant shall be allocated to the available quantity of Class I milk, and any balance of such receipts to the available quantities of Class II milk, Class III milk, and Class IV milk, in that sequence; and the fluid cream received from an approved plant shall be allocated in a similar manner to the available quantities of Class II milk, Class III milk, Class IV milk, and Class I milk, in that sequence.

3. Delete § 941.4 (e) (3) (ii) and substitute therefor the following:

(e) *Computation of milk in each class.* * * *

(3) * * *

(ii) Multiply each of the resulting amounts by its average butterfat test (in the case of flavored milk and flavored milk drinks the test to be used shall be the average fat test of the finished product if the handler's production records do not show the amount of butterfat contained therein); and add the results so obtained.

4. Redesignate subparagraphs (2), (3), (4), and (5) of § 941.4 (f) as subparagraphs (3), (4), (5), and (6), respectively, and add as subparagraph (2) the following:

(2) Subtract from the remaining pounds of milk in each class the pounds of milk obtained from frozen cream or from any other product that has been classified in an earlier delivery period and is reused (or utilized) in the current delivery period in such class.

5. Delete § 941.4 (b) (2) and substitute therefor the following:

(b) *Classes of utilization.* * * *

(2) Class II milk shall be all milk the butterfat from which is contained in sweet or sour cream, any fluid cream product having more than 6 percent butterfat, butter cream, filled cream, frozen cream, plastic cream, eggnog, yoghurt, ice cream, ice cream mix (liquid or powder), cottage cheese, and any other milk product of composition and texture similar to any of the products named in this subparagraph; except that this definition shall not include butterfat in cream, fluid cream products, filled cream, and cottage cheese disposed of in bulk in bakeries, soup companies, and candy manufacturing establishments in their capacity as such.

6. Delete from § 941.4 (b) (4) (iii) the words "or to an unapproved plant."

7. Delete from § 941.4 (e) (6) (vi) the words "or to unapproved plants."

8. Delete paragraphs (a) and (b) of § 941.5 and substitute therefor the following:

§ 941.5 *Minimum prices*—(a) *Basic formula price.* The basic formula price to be used in computing the prices of Class I milk and Class II milk for each delivery period shall be the higher of the prices for Class III milk and Class IV milk as computed by the market administrator pursuant to subparagraphs (3) and (4) of paragraph (b) of this section for the delivery period next preceding: *Provided,* That the basic formula price effective for July shall not be less than that effective for June and that the basic formula price effective for December shall not be higher than that effective for November.

(b) *Class prices.* Subject to the appropriate location adjustment credits, as set forth in paragraph (c) of this section, each handler, at the time and in the manner set forth in § 941.8, shall pay per hundredweight of milk purchased or received during each delivery period from producers or from cooperative associations, not less than the prices set forth below in this paragraph:

(1) *Class I milk.* The price for Class I milk shall be the basic formula price plus the following amount for the delivery period indicated: May and June, $0.50; August, September, October, and November, $0.90; all others, $0.70.

(2) *Class II milk.* The price for Class II milk shall be the basic formula price plus the following amount for the delivery period indicated: May and June, $0.30, August, September, October, and November, $0.50; all others, $0.40.

(3) *Class III milk.* The price for Class III milk shall be the highest of the prices resulting from the respective formulas set forth in subdivisions (i) and (ii) of this subparagraph and in subparagraph (4) of this paragraph.

(i) The average of the prices per hundredweight reported to have been paid, or to be paid, for such delivery period to farmers for milk containing 3.5 percent butterfat delivered during such delivery period at each of the following listed manufacturing plants or places for which prices are reported to the United States Department of Agriculture or to the market administrator:

Companies and Location

Borden Co.:
Black Creek, Wis.
Greenville, Wis.
Mt. Pleasant, Mich.
New London, Wis.
Orfordville, Wis.
Carnation Co.:
Berlin, Wis.
Jefferson, Wis.
Chilton, Wis.
Oconomowoc, Wis.
Richland Center, Wis.
Sparta, Mich.
Pet Milk Co.:
Belleville, Wis.
Coopersville, Mich.
Hudson, Mich.
New Glarus, Wis.
Wayland, Mich.
White House Milk Co.:
Manitowoc, Wis.
West Bend, Wis.

(ii) The price per hundredweight computed from the following formula:

(a) Multiply the average wholesale price per pound of 92-score butter at Chicago for the delivery period as reported by the United States Department of Agriculture, by 6;

(b) Add 2.4 times the average weekly prevailing prices per pound of "Twins" during the delivery period on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: *Provided*, That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price of "Cheddars" shall be deemed to be the prevailing price for "Twins" and shall be used in determining the price pursuant to this formula;

(c) Divide by 7;

(d) Add 30 percent thereof; and

(e) Multiply by 3.5.

(4) *Class IV milk.* The price for Class IV milk shall be that computed from the following formula: Multiply by 3.5 the arithmetical average of daily wholesale prices per pound of 92-score butter in the Chicago market, as reported by the United States Department of Agriculture during the delivery period, add 20 percent thereof, and add to, or subtract from, such sum 3¾ cents for each full ½ cent that the arithmetical average of carlot prices per pound of nonfat dry milk solids (not including that specifically designated animal feed), spray and roller process, f. o. b. Chicago area manufacturing plants, as reported by such agency during the delivery period, is respectively above or below 5 cents: *Provided*, That for the delivery periods of March, April, May, and June "6 cents" shall be substituted for "5 cents" in such computation: *And provided further*, That if such f. o. b. manufacturing plant prices of nonfat dry milk solids are not reported there shall be used for the purpose of such computation the arithmetical average of the carlot prices of nonfat dry milk solids delivered at Chicago, Illinois, as reported weekly by such agency during the delivery period; and in the latter event the respective amounts "5 cents" and "6 cents" shall be increased by one cent.

9. Delete § 941.5 (c) (1) and substitute therefor the following:

§ 941.5 *Minimum prices.* * * *

(c) *Location adjustment credit to handlers.* (1) The location adjustment credit with respect to that portion of milk received directly from producers at an approved plant (i) which is moved in the form of fluid milk or fluid skim milk from such approved plant to a plant engaged in the bottling of fluid milk, which is located less than 70 miles from the City Hall in Chicago, or (ii) which is classified as Class I milk but did not move in the manner described in subdivision (i) of this subparagraph or in subparagraph (2) (i) of this paragraph, shall be 2 cents per hundredweight for each 15 miles or fraction thereof that such approved plant is located more than 70 miles but not more than 265 miles from the City Hall in Chicago, and 1 cent per hundredweight for each additional 15 miles or fraction thereof that such approved plant is located beyond 265 miles from the City Hall in Chicago: *Provided*, That there shall be no location adjustment credit with respect to milk classified as Class I milk pursuant to § 941.4 (b) (1) (iii): *And provided further*, That all such mileages shall be computed by the market administrator by rail or highway distance, whichever is shorter.

10. Add as § 941.6 (d) the following:

§ 941.6 *Application of provisions.* * * *

(d) *Butterfat in skim milk.* A handler may claim, for classification purposes pursuant to § 941.4, butterfat in skim milk disposed of to others or used in the manufacture of milk products by including the butterfat content of such skim milk in his report for the delivery period filed pursuant to § 941.3 (a) (2) or by giving prior notification to the market administrator of his desire to do so. In the event that a handler does not have adequate records of the butterfat content of such skim milk, the market administrator shall use 0.06 percent as the butterfat content per hundredweight of such skim milk: *Provided*, That if the handler desires to discontinue accounting for butterfat in skim milk, or after discontinuing the accounting therefor desires to again account for the same, he may do so by notifying the market administrator in writing at least 30 days prior to the first day of the delivery period during which such change shall become effective.

11. Delete § 941.8 (b) and substitute thereafter the following:

§ 941.8 *Payment for milk.* * * *

(b) *Location adjustments to producers.* In making payments to producers pursuant to paragraph (a) (2) of this section, each handler shall deduct per hundredweight of milk purchased or received from producers at a plant located more than 70 miles from the City Hall in Chicago, 2 cents for each 15 miles or fraction thereof between 70 miles and 265 miles from the City Hall in Chicago, and 1 cent per hundredweight for each additional 15 miles or fraction thereof that such plant is beyond 265 miles from the City Hall in Chicago: *Provided*, That all such mileages shall be computed by the market administrator by rail or highway distance, whichever is shorter.

12. Insert in § 941.9 (a) following the phrase "a sum not exceeding 2 cents per hundredweight" the words, "or such lesser amount as the Secretary may prescribe," and delete from such paragraph the words "the exact sum to be determined by the market administrator, subject to review by the Secretary."

13. Delete § 941.9 (b).

14. Delete from § 941.10 (a) the words "or such lesser amount as the market administrator shall determine to be sufficient, such determination to be subject to review by the Secretary" and substitute therefor the words "or such lesser amount as the Secretary may prescribe."

This decision filed at Washington, D. C. this 18th day of August 1947.

CHARLES F. BRANNAN,
Acting Secretary of Agriculture.

[F. R. Doc. 47-7845; Filed, Aug. 21, 1947; 9:47 a. m.]

[CFR 7, Part 975]

HANDLING OF MILK IN CLEVELAND, OHIO, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act") and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and order (7 CFR Supps., 900.1 et seq.; 10 F. R. 11791; 11 F. R. 7737; 12 F. R. 1159, 4904) a public hearing was held at Cleveland, Ohio, June 30–July 3, 1947, inclusive, pursuant to the notice thereof which was published in the FEDERAL REGISTER on June 26, 1947 (12 F. R. 4153), upon certain proposed amendments to the tentatively approved marketing agreement and to the order regulating the handling of milk in the Cleveland, Ohio, marketing area.

Preliminary statement. The proposed amendments upon which the hearing was held were submitted by the Milk Producers Federation of Cleveland, the Milk Market Survey Committee, the Elm Farm Dairy, the Wooster Farm Dairies, the Orville Milk Condensing Company, the Ohio Guernsey Breeders Association, Inc., and the Dairy Branch, Production and Marketing Administration.

The material issues presented on the record of the hearing were whether:

1. An emergency exists which warrants immediate effectuation of revisions in the order;

2. The definition of the term "route" should be revised;

3. The list of pool plants set forth in § 975.3 (a) (2) (i) should be revised to include additional plants;

4. Ice cream operations should be excluded entirely from coverage by the pool plant provisions of the order or whether the application of the reporting and classification provisions to such operations should be modified;

5. The classification provisions should be revised with respect to milk and cream moved in fluid form to points between 100 and 160 miles from a pool plant;

6. The provisions for the allocation of milk classified should be revised;

7. Milk utilized as fluid cream should be (i) reclassified from Class I milk to Class II milk, or (ii) repriced although retained in Class I milk;

8. Unspecified milk uses and shrinkage in excess of 2 percent of receipts should be reclassified from Class I milk to Class III milk;

9. Milk utilized in products now in Class II milk should be (i) reclassified from Class II milk to Class III milk, or (ii) repriced although retained in Class II milk;

10. The pricing of butterfat shrinkage in Class III milk should be revised;

11. Skim milk or butterfat classified in one class should be reclassified when used or reused by a handler in another class;

12. The application of the basic formula price provisions should be revised;

13. The Class I and Class II price provisions should be revised to (i) change the differentials over the basic formula price during certain months, and (ii) provide "floor" prices for Class I milk;

14. The Class III price provisions should be revised as to the pricing of certain milk products and shrinkage of butterfat;

15. The application of the provision establishing the obligations of "non-pool plants" should be modified;

16. The application of the location adjustments to handlers should be modified;

17. Administrative assessments applicable to other source milk used in ice cream should be eliminated;

18. Special price consideration should be given to milk of high butterfat content, particularly "Golden Guernsey" milk; and

19. A change should be made in the method of allowing shrinkage on producer milk transferred to a second handler without being physically received in the first handler's pool plant.

Findings and conclusions. The following findings and conclusions on the material issues are based upon the evidence introduced at the hearing and the record thereof:

1. An emergency exists which requires that action be taken promptly to incorporate into the Cleveland order the findings and conclusions hereinafter set forth without allowing time for a recommended decision by the Assistant Administrator, Production and Marketing Administration, and the filing of exceptions thereto. The due and timely execution of the functions of the Secretary of Agriculture under the act imperatively and unavoidably requires the omission of such recommended decision and the filing of exceptions thereto.

Evidence was introduced at the hearing showing that a series of unavoidable delays had occurred prior to the hearing each of which served to postpone calling a hearing to consider proposals to revise various provisions of the order, to correct pending emergency conditions.

Ample evidence was presented at the hearing to show conclusively that surrounding markets, some of which are Federally regulated, are short of milk and have already revised producer paying prices upwards as a means of obtaining greater milk supplies. Handlers in these competing markets have already begun to solicit producers currently supplying milk to the Cleveland market.

It was generally agreed by both handlers and producers that the Cleveland market will be seriously short of milk during the coming months if present prices continue and that action should be taken as soon as possible to recognize competitive conditions and ease the emergency which will otherwise reach an acute stage very shortly. At this time of year when production is generally declining seasonally, alternative markets are exceptionally short of milk and will be in a position to encourage diversion of producers to such markets where prices are higher. Experience has shown that when prices in other markets have remained substantially above Cleveland prices for any length of time there has been a wholesale shifting of milk away from the Cleveland market.

Any further delay in effectuating needed changes in the order would seriously threaten an adequate supply of pure and wholesome milk for the Cleveland market, would disrupt orderly marketing, and would be contrary to the public interest.

2. The definition of the term "route" should be revised with respect to deliveries to eating places where milk is disposed of for consumption on or off the premises.

Administrative questions have arisen concerning the intended meaning of the term "route" as now defined in the order. Specifically, it has been questioned whether or not milk delivered from a point of origin outside the marketing area to one stop or delivery point within the marketing area for the purpose of supplying an eating place would constitute a "route" within the meaning of the definition. Likewise, questions have arisen as to whether or not the type of conveyance to the marketing area in any way affects the meaning of the term. The recommended change in the language of the definition should clarify the intended meaning of the term to avoid confusion regarding its application without changing the meaning currently being applied.

3. The list of pool plants now contained in the order should be revised to include the surplus handling plant of a producers' cooperative association.

The order as presently in effect lists certain pool plants under the order and also provides methods by which additional plants may become listed pool plants. The methods by which plants not listed may acquire listed pool plant status involve both the quantity and length of delivery of milk.

A surplus handling plant was established by the Milk Producers Federation of Cleveland, a cooperative association of producers, in 1941 to assist in the orderly marketing of milk. It receives surplus milk nearly every year, usually beginning about April 1, cools it and ships it to manufacturing plants for processing. It is operated solely to service the Cleveland fluid milk market by handling and removing surplus milk in the flush months. As a surplus receiving plant its operations are seasonal and there is no assurance that milk will continue to be received in quantity or for sufficiently long periods during any one year to enable it to qualify as a listed pool plant, or once qualified to maintain a listed status under the present requirements of the order. Although milk which is received at the association plant is taken in without having been first received in the plant of a handler, it is with the understanding that the producers of such milk are to deliver their milk to the handler who had previously received it as soon as such handler is in a position to take it again. Payment for any such milk received by the association is made at present direct to the handler and the handler continues to be responsible for payment to the individual producers.

Membership in the producer association guarantees members a market for their milk. Loss of their market would force the association to take member milk and pay the equivalent of pool prices for it. Producers whose milk is delivered to the plant of the association, for which the association assumes responsibility for payment to the individual producer, are not eligible under prevailing conditions to receive payments out of the pool. If such milk had to be disposed of at prices below the uniform price under the order, the cooperative association would be placed at a distinct disadvantage since it would have to make up to the producer the difference in price. The cooperative association operating the subject plant should not be placed in such a position of disadvantage. Because of the seasonal and market servicing nature of its plant operations, it should not have to conform to the same requirements for listed pool plant status as plants operated by handlers. Past operations indicate the importance of its functions to the market and therefore it should be listed as a pool plant.

At the hearing a request was made to add to the list of named pool plants in § 975.3 (a) (2) (i) a plant operated by the Pet Milk Company at Freemont, Ohio. However, no special circumstances were shown which would warrant deviation from the normal procedures provided in § 975.3 (a) (2) (ii) for such listing.

4. The reporting and classification provisions of the order should be revised so as to cover milk and milk products received by handlers at plants located in the marketing area where ice cream is manufactured.

Proposals were received which would (i) exclude all ice cream operations from coverage by the pool plant provisions of the order, and (ii) extend the coverage of the reporting and classification provisions of the order to ice cream operations by handlers in nonpool plants located in the marketing area.

As the order now stands, an ice cream plant operated at the same location and in conjunction with a handler's pool plant is subject to the reporting and classification provisions of the order. On the other hand, an ice cream plant of a handler operated as a separate establishment from his pool plant is now outside the scope of such provisions even though such ice cream plant is located in the marketing area.

Accordingly, the order now affects handlers making ice cream differently depending only upon the physical location of their ice cream plants. Handlers whose ice cream manufacturing operations are conducted at their pool plants receive all their milk and cream through one intake and receipts become completely commingled so that there is no basis for distinguishing which producer's milk is to be used for each purpose. In making the pool computations, such milk cannot be segregated.

It also was contended that under section 8c (5) (B) of the act the Secretary "cannot legally place under the terms of the order those manufacturers who are solely engaged in the production of ice cream." This question of law does not appear to be a material issue since such action is not now to be taken. The alleged inequity in cost of materials between operators of such plants and han-

dlers which was referred to in connection with this contention is considered more fully under conclusion (9).

All handlers under the order who operate ice cream plants are in competition with one another for their raw material supplies including cream and skim milk. Likewise, they compete with one another in the sale of their finished products.

Handlers whose ice cream manufacturing operations are within the scope of the order are required to pay minimum class prices for skim milk and butterfat in producer milk used in ice cream while ice cream makers operating outside the order are not. The former are required also to pay the administrative assessments on such skim milk and butterfat.

It is essential that all handlers be treated equitably in the classification of milk and that utilization costs of milk received from producers be determined on a uniform basis for all handlers. These purposes can best be advanced by extending the coverage of the reporting and classification provisions of the order to all nonpool plants of handlers located in the marketing area where ice cream is manufactured.

5. The classification provisions should be revised with respect to milk moved in fluid form to points between 100 miles and 160 miles from a pool plant so as to permit its classification according to ultimate use.

Under the terms of the current order, milk which is moved in fluid form to points more than 100 miles distant from the pool plant of the handler is classified as Class I milk. The proposal would increase to 160 miles the distance which milk in fluid form may be shipped to a nonpool plant without automatically being considered as Class I milk. Experience indicates that this distance should be increased to assure that adequate manufacturing facilities will be included within the radius within which milk in such form is likely to move for manufacture.

It was contended that § 975.5 (b) (1) (ii) of the order as now in effect, and as proposed to be amended, is in violation of section 8c (5) of the act in that it allegedly classifies milk according to distance instead of according to form or use. This contention is without merit because the section actually classifies milk according to its form at a specified place, i. e. in fluid form more than 160 miles from the pool plant where received.

6. § 975.5 (g) (2) (i) should be revised to include milk transferred from other pool plants as well as milk received from producers, and to exclude reconstituted skim milk from the handler's total Class I sales, for the purposes of the 105 percent computation therein.

Under the present order it is provided in § 975.5 (g) (2) (i) that in determining the pounds of producer milk to be allocated to each class, there shall be deducted from the pounds of butterfat in Class I milk either the pounds by which butterfat in milk received from producers is less than 105 percent of the pounds of butterfat in the handler's fluid Class I sales (except cream) or the pounds of butterfat in other source milk received, whichever is smaller. In such computation there should be added to the amount of butterfat in milk received from producers that quantity of butterfat in milk received by the handler from other pool plants. Pool plants customarily receive the bulk of their milk from producers. It is usual that such milk is not transferred from one pool plant to another unless the first plant's Class I milk needs already have been met. By transferring such milk from one pool plant to another it is readily available for Class I milk purposes, and should be in the same category so far as the second plant is concerned as milk received directly from producers.

In determining the amount of Class I milk disposed of by a handler for the purposes of § 975.5 (g) (2) (i) reconstituted skim milk should not be included in the Class I milk total. Reconstituted skim milk is not permitted under existing local health requirements for sale as fluid milk in Cleveland, the major segment of the marketing area, and accordingly should not displace producers' milk in determining the allocation of Class I milk.

Under § 975.5 (h) the foregoing also applies to the allocation of skim milk. It was proposed that producers be required to deliver milk equal in quantity to at least 115 percent of the handler's Class I fluid milk requirements in order that greater quantity of Class I milk might be allocated to other source milk; Evidence was submitted to show that in certain periods and for some handlers the 105 percent minimum was not adequate to cover Class I sales. Market statistics show, however, that for the entire market there has been no month in which deliveries by producers were not at least equal to 105 percent of the Class I milk disposed of in the market and that the real problem is one of distributing the supply of milk among plants for greater use as Class I milk. For this reason, it appears that no change in percentage is warranted.

7. Cream should be repriced but retained in Class I milk rather than reclassified from Class I milk to Class II milk.

Proposals submitted by handlers would require the reclassification of cream from Class I milk to Class II milk. The apparent basis for the request was to establish class prices for skim milk and butterfat used as cream in line with the prices of cream purchased on the outside. It was indicated that the supply area for cream meeting the applicable health standards for sale as fluid cream is slightly broader than the area from which fluid milk is obtained.

Evidence introduced at the hearing shows prices of cream purchased on the open market to average $35.03 for ten gallons of 40 percent cream for the nine month period of operation of the order. Thus, the price of the fat in cream purchased on the open market averaged about $1.04 per pound as compared with an average Class I price of fat of $0.98 under the order. The difference of about 6 cents represented the amount by which the price of butterfat in Class I milk under the order was below the price of butterfat in open market purchased cream. In terms of milk of 3.5 percent butterfat content the difference is equivalent to about 21 cents per hundredweight. Evidence introduced alleged costs of receiving and processing milk through the separating stage to average about 36 cents per hundredweight of milk. The net difference in cost between purchasing cream on the open market and the cost of purchasing order-priced milk to obtain cream, is about 15 cents per hundredweight. On the basis of the evidence in the record it appears that on the average a reduction in the price of milk used for cream of about 15 cents per hundredweight would bring the cost of cream made from producer milk under the order well in line with alternative market prices for cream.

8. Unspecified milk uses and shrinkage in excess of 2 percent of receipts should not be reclassified from Class I milk to Class III milk.

It was proposed to reclassify from Class I milk to Class III any milk product or use now unspecified. The record does not contain any specific information concerning this proposal which would provide an adequate basis for considering any change.

Handlers proposed that all shrinkage be given credit as a Class III obligation. Under the current order actual shrinkage not in excess of 2 percent is considered as Class III milk. Any plant shrinkage in excess of 2 percent is considered as Class I milk.

Data for the representative months of October 1946 and January and April 1947 indicate a net shrinkage for the market to be 1.25 percent, 1.77 percent, and 1.76 percent, respectively, of receipts. To permit a substantially greater shrinkage allowance in Class III milk than is needed to cover the shrinkage experience from plant operations for the market as a whole would penalize the more efficient handlers to the benefit of the less efficient handlers. In order to maintain a high degree of equity among handlers it does not appear desirable to make any change in this respect.

9. Milk used in products now in Class II milk should not be reclassified from Class II milk to Class III milk but should be retained as Class II milk and repriced; the price of butterfat in Class II milk should not be permitted to be lower than the price of butterfat in Class III milk.

A proposal submitted by handlers would require the reclassification of milk used in ice cream and other Class II milk products from Class II milk to Class III milk. The primary basis for proposing such reclassification was to establish lower prices for milk used in ice cream. Evidence was submitted concerning the relative costs of purchasing cream and condensed skim milk on the open market for use in making ice cream and of purchasing milk under the order from producers and processing it for use as ice cream.

Considerable evidence was introduced to indicate that ice cream manufacturers selling in the marketing area but operating outside the scope of the order have been in a position to purchase raw material supplies somewhat cheaper than handlers operating under the order.

A comparison of locally quoted prices for cream and condensed skim milk with

order prices for milk used for ice cream indicates that for each of the months of September 1946 through April 1947 prices were somewhat in favor of buying cream and condensed skim milk outside when processing costs of order-priced milk were taken into account. This purchase advantage varied from a high of 33.6 cents per hundredweight of 3.5 percent milk in January 1947 to a low of 15.6 cents in December 1946. Data for May 1947 indicate a slight disadvantage of 1.4 cents per hundredweight of 3.5 percent milk in buying cream and condensed skim in the open market as against order-priced milk. The average advantage in favor of open market purchases for the nine months of order operation was about 20 cents per hundredweight. Other items now covered by Class II milk customarily are utilized in making ice cream. On the basis of these data milk for the uses now covered by Class II milk should be repriced as Class II milk rather than reclassified from Class II milk to Class III milk.

Evidence was introduced to show also that as formulas in the order now operate the price of butterfat in Class II milk has been from time to time less than the price for butterfat in Class III milk. The price of butterfat in Class II milk should not be permitted to fall below the price of butterfat in uses generally regarded as being among the lowest-valued uses for butterfat.

10. The basis for pricing butterfat shrinkage in Class III milk should be revised to provide for the pricing of such shrinkage (not in excess of 2 percent of producer receipts) at the lower of the Class III prices provided in the order.

Under the present order butterfat shrinkage not in excess of 2 percent of receipts is charged handlers on the basis of the higher of the alternative Class III prices. Skim milk shrinkage not in excess of 2 percent of producer receipts is charged at the lower of the alternative Class III prices. It is estimated that the proposed revision would have a negligible effect on the Class III price. The proposed revision would permit a uniform pool treatment of the shrinkage both of skim milk and butterfat and accordingly would simplify the pool computation. No objections were offered to this change.

11. The present order provisions whereby skim milk or butterfat classified in one class is reclassified when used or reused by a handler in another class should not be changed.

Under the present terms of the order, milk classified in one class and later used or reused is subject to reclassification in accordance with its ultimate class use by a handler. A proposed amendment would, if adopted, require that once classified skim milk or butterfat later used or reused in a different use class could not be reclassified in accordance with its ultimate use by a handler.

The question at issue is particularly significant with respect to cream and condensed skim milk which are stored during the flush season of production for later use, primarily in ice cream or ice cream mix manufacture. When stored, these products are classified in Class II and Class III, respectively. If used later in the manufacture of ice cream, they are reclassified as Class II milk and appropriate adjustments are made in the pool value on the basis of the class prices in effect during the delivery period when the products were stored. Seasonally higher class prices during the fall and winter months tend to offset package, storage, risks of loss in quality which, it was argued, are incurred if milk is processed and stored. Handlers have the option to dispose of skim milk and butterfat at the time of receipt in the most advantageous outlet and acquire supplies needed for manufacturing purposes during the fall months in the open market. Adoption of the proposed change also would tend to reduce returns to producers and tend to discourage needed production. A fundamental aim of the provision now in effect is to assure equity of cost to handlers taking their different situations into account as to ability to process and store products during the flush period of production. In view of the above it is concluded that such provision as now in effect should not be changed.

12. The application of the basic formula price provisions should be revised.

In the present order, the basic formula price is the highest of three manufacturing milk price formulas based, respectively, on the "paying" prices of several evaporated milk concerns, open market prices of butter and cheese and open market prices of butter and nonfat dry milk solids, for the current delivery period. Under the proposal, the highest price resulting from these manufacturing milk formulas for the delivery period next preceding (now the basic formula for such delivery period) would be the basic formula price for the current delivery period. The proposal is designed to enable handlers to know with certainty their purchase prices for Class I milk and Class II milk by the fifth day of the delivery period during which the milk so utilized is received.

Currently, class prices are not known until approximately the fifth day after the end of the delivery period during which the milk is received and after the Class I milk and Class II milk has been disposed of by handlers. Analysis of past price relationships indicate that this proposal would have a very minor effect over a period of time upon the price levels of such classes of milk. More orderly marketing will be encouraged by the announcement of the Class I and Class II prices early in the delivery period during which milk in such classes is disposed of by handlers. Handlers will be in a position to reflect changes in producer prices in their prices to consumers much more rapidly. For these reasons the proposal to base such class prices upon the manufactured formula prices for the next preceding delivery should be adopted with the condition that the basic formula price effective for July shall be not less than that for the preceding month of June. The latter proviso will tend to preserve the proper seasonal trend of prices as the short production season is approached.

Substantial quantities of the milk supply for the marketing area are disposed of from time to time in the form of manufactured milk products covered by the Class III milk definition. The latter products are in open competition with similar products not meeting any formal health inspection. Because of the highly competitive character of the markets for the products covered by Class III milk, the prices for the latter class should continue to be based upon market prices for manufactured milk products for the current delivery period rather than for the next preceding delivery period.

13. Class I and Class II milk price provisions should be revised to establish higher seasonal differentials over the basic formula price during the months of September, January, and February; and Class I prices should be revised also to establish temporary "floor" prices.

A short supply of milk from producers in relation to milk for Class I and Class II milk needs is evident beginning in September and continuing through February. Substantial quantities of other source milk have been required during each month, with particularly large quantities being required during the period of smallest production.

Available evidence indicates that feed supplies can be expected to be exceptionally short and high priced this fall and winter. The planting season was delayed three to four weeks due to unseasonable wet weather. Crop experts testified that the corn and oat crops in Ohio might be as much as 50 percent below normal. Feeding values of hay are expected to suffer seriously as a result of late harvests caused by the wet weather. Current costs of concentrate feeds are appreciably above those of a few months ago and are expected to rise further. Experience indicates that producers, in order to supply greater milk production during the fall and winter months, must feed more liberally than those producing for manufacturing purposes and accordingly are more seriously affected by high feed prices. Costs of capital equipment, labor, transportation and supplies have increased substantially during recent months. In addition, indices of increases in the relative profitableness of alternative uses of land, labor, and capital by producers such as for the production of livestock, poultry and eggs, as compared with milk, indicates a threat to an adequate supply of pure and wholesome milk for use in the Cleveland marketing area. The failure of prices in other nearby competing markets to drop in line with the decrease in Cleveland prices under the formula is having and will continue to have serious effects on the Cleveland supply if permitted to continue for an extended period without adjustment of the price at Cleveland.

If producers are to be induced to continue to supply milk to Cleveland they must have some assurance of adequate minimum prices during the coming months of short supply. Under the present order, Class I and Class II prices are determined on the basis of the higher of specified manufacturing plant "pay" prices. In order to meet heavy war requirements for manufactured milk products these prices increased substantially. With the termination of the war milk product manufacturers readjusted their prices rapidly. The readjustment resulted in serious declines in producer

prices considerably in excess of a normal seasonal change. The result has been to reduces such prices in relation to other markets competing for supply.

As a basis for demonstrating demand factors for milk and its products in Cleveland, evidence was submitted concerning numbers of wage earners, pay rolls; retail sales, construction and steel operations. All of these indices show substantial increases as compared with a year earlier and show no weakening in consumer spending power. From these indices effective demand for milk and its products seems likely to continue high for some time to come.

In order to encourage a more even flow of production by establishing a more desirable seasonal pattern of pricing, which will tend to encourage greater milk production during the fall and winter months when production is particularly short, it is desirable to include September, January, and February with the months when highest differential over the base price is paid for Class I and Class II milk.

In view of the evidence of increasingly short supplies of milk, the likelihood that producers will be enticed by price levels in competing markets, increasing costs of labor, feed, supplies and equipment, and the evidence of continuing high demand it is imperative that if producers are to be encouraged to supply the needs of the market consideration should be given to "forward" pricing at some minimum level during the next few months of exceptionally short supply while the prices established by the basic formulas are being readjusted. Considering all of the foregoing it appears that temporary floor prices for Class I milk at the following levels will give the needed minimum assurance to producers.

The floor prices to be effective are as follows: September to December 1947, inclusive, $4.79; January—a price not less than 44 cents per hundredweight of 3.5 percent milk below the effective Class I price for December; and February—a price not less than 44 cents per hundredweight of 3.5 percent milk below the effective Class I price for January.

It does not appear desirable at this time to consider extending floor prices into the spring flush production period when demand, supply, and basic price relationships may be considerably different than at present and also different from what may be anticipated during the next six months.

14. The formula for determining the price of Class III skim milk utilized in evaporated milk, bulk condensed skim or whole milk, powdered malted milk, and cottage cheese should be revised.

As the order now operates, prices for skim milk and butterfat are computed on the basis of the market prices for butter and roller process nonfat dry milk solids. These prices apply in all instances except when either the price per hundredweight of 3.5 percent milk produced by the condensery "pay price" formula or the butter-cheese formula (alternative basic price formulas) is higher than the price resulting from the "butter-nonfat dry milk solids" formula. Under the latter circumstance skim milk utilized in evaporated milk, bulk condensed skim and whole milk, powdered malted milk, and cottage cheese is priced on the basis of the higher of the condensery price or butter-cheese price formulas.

The latter formulas, particularly the condensery pay formula (average of prices paid by 18 Wisconsin and Michigan plants) used, have operated to produce a higher price for the skim milk for such named uses than could be realized readily from the disposition of milk or skim milk to nearby manufacturing plant outlets. Because of this, some difficulty has been encountered by certain handlers in disposing of milk in excess of Class I and Class II needs during some of the months of increasing seasonal production. Action was taken earlier this year suspending § 975.6 (d) (3) of the order to effect a lower price for skim milk in such indicated uses in order that all surplus might be disposed of without hardship to those handlers having excess supplies.

In order to facilitate the orderly marketing of individual plant surpluses it does not appear necessary or desirable to continue to price skim milk in such uses at a level as low as that brought about by the suspension order. However, some adjustment in price seems appropriate on the basis of the prices which manufacturing plants in Ohio have paid in relation to the prices resulting from the condensery "pay" or butter-cheese price formulas provided in the order.

A factor of 25 cents deducted from the condensery, or butter-cheese, formula price in the computation of the price for skim milk used in such products, as specified in the order, as amended, will result under present conditions in a more representative price of skim milk for such uses.

15. The application of the provision establishing the obligations of "nonpool handlers" should be modified so as to require that nonpool plants which deliver skim milk or butterfat to pool plants that receive less than 50 percent of their skim milk and butterfat from producers or other pool plants shall be obligated to the producer-settlement fund for the difference between the Class I and Class III prices on any milk sold as Class I by the receiving pool handler.

The present order provides that a nonpool plant furnishing milk, skim milk, buttermilk, flavored milk or flavored milk drink to a pool plant which receives less than 10 percent of its total skim and butterfat from producers or from other pool plants shall pay to the producer-settlement fund the difference between the order price applicable to such Class I milk uses and the Class III milk prices on such deliveries which are classified as Class I milk at the receiving pool plant. It was proposed that such obligation of nonpool plants to the producer-settlement fund be applied in all cases where the receiving pool plant is supplied with less than 50 percent (rather than 10 percent) of its receipts of skim milk and butterfat from producers or from other pool plants.

An administrative problem has arisen in this connection which is not adequately covered by the present order provisions. It is possible for the nonpool plants to transfer or divert milk, skim milk, buttermilk, flavored milk or flavored milk drink to a pool plant without obligation to the producer-settlement fund if the pool plant receives more than 10 percent of its total supply from producers or from other pool plants. Unless an emergency supply situation exists, this can create an unequitable situation in the cost of milk to handlers and should not be permitted. The percentage figure to be used should tie in appropriately with other provisions regarding the minimum qualifications of plants desiring to become pool plants.

16. Location adjustments now applicable to milk received at the country plant of a handler and delivered to the marketing area should be revised so as to permit handlers to obtain the benefit of the location adjustment on Class I and Class II milk sold outside the marketing area.

Presently, location adjustment credits are allowed only on items of Class I and Class II milk actually moved from the country plant to the marketing area. No such adjustments have been allowed on such items disposed of from the plant to any point not in the marketing area. As proposed, such credits would be permitted with respect to all Class I and Class II milk received at a country plant regardless of the point of disposition, to cottage cheese, a product covered by Class III milk, and to milk moved for Class III milk purposes from the country plant where originally received to a manufacturing plant also in the country.

Certain pool plants in the country regularly sell substantial amounts of milk outside the marketing area as bottled fluid milk or cream. The net cost f. o. b. country plant has been greater to the handler by the amount of the adjustment for the particular zone location of the country plant when the item was disposed of outside the marketing area rather than in the marketing area. The proposed change will result in a cost of milk to handlers received at a country plant and used outside of the marketing area as Class I or Class II milk which is equivalent f. o. b. the country plant to the cost of items of Class I and Class II milk moved to the marketing area for disposition there. A better alignment of prices throughout the milkshed should result by extending the application of the handler location adjustments by zones to such Class I and Class II milk as a handler may dispose of from a country plant to points outside the marketing area.

The application of zone location adjustments to cottage cheese moved to the marketing area or to manufacturing milk moved from a country plant to a manufacturing plant also in the country do not appear warranted. Milk utilized for Class III or manufactured milk products and for cottage cheese is in strong and open competition with other manufactured milk not regulated by the order and which is not subject to similar location adjustments. Competitive pricing for Class III uses would be thrown out

of alignment by the application of location adjustments to milk under the order utilized by handlers for manufactured milk products and cottage cheese. For similar reasons handler location adjustment credits should not be applied to all producer milk moved from a pool plant at a country location.

17. The administrative assessment applicable to other source milk used in ice cream should be eliminated.

The health requirements applicable to milk for use as ice cream in the marketing area are not as stringent as those governing milk for use either as fluid milk or fluid cream. A substantial percentage of ice cream is manufactured and distributed in the marketing area by concerns which are not handlers. Such concerns utilize large quantities of milk, cream and condensed skim milk which are not derived from producer's milk. Such concerns are in close competition with handlers who manufacture and distribute ice cream. Handlers making ice cream often find it necessary to purchase outside cream and condensed skim milk for ice cream disposition. In order to give handlers the opportunity of securing other source milk for making ice cream on an equivalent basis with competitors who are not regulated, the assessment on other source milk utilized for ice cream should be eliminated.

18. The rate of producer butterfat differential should be calculated as the weighted average price of butterfat in all classes minus the weighted average price of skim milk in all classes.

Changes in the order were proposed which if adopted would have distinguished between Golden Guernsey milk and other "special" milks as compared with regular milk on the basis of alleged special qualities. In the alternative it was proposed that a revision be made with the butterfat differential designed to increase the rate of butterfat differential to all producers of high testing milk.

The record indicates that the Cleveland market is short of both butterfat and "serium solids" but is particularly short of butterfat. A great deal of fluid cream and bulk condensed skim milk is received from sources other than producer milk for disposition as fluid cream and in ice cream in the marketing area. The average test of milk sold in fluid form is approximately 3.74 percent. However, the butterfat test of milk as received from producers is considerably lower than the average test of all Class I products sold. The value of milk varies with its butterfat content and the order now provides a butterfat differential to producers for milk having a butterfat test above or below 3.5 percent.

The producers of "Golden Guernsey milk" represent about 0.6 percent of all producers of qualified milk. No testimony was given with respect to any other "special milks" in support of preferential treatment. In view of the small percentage of Golden Guernsey producers shipping to the marketing area it does not appear that milk of the higher butterfat content (4.5 percent and over) claimed by such producers for their milk is a substantial element in fulfilling the regular requirements for the sale of fresh fluid milk and cream. Testimony relating to the qualities of Golden Guernsey milk as compared with regular milk does not disclose that such milk differs materially in quality from other milk of comparable butterfat content. Producers of high butterfat content milk including Golden Guernsey milk do not have a fluid milk outlet for all the milk they produce. Some of such milk including the butterfat component is disposed of in other uses including manufacturer milk products.

On the basis of the above the principal issue is whether the butterfat differential to producers is commensurate with its use value.

The general shortage of butterfat indicates the need for a higher butterfat differential than is now reflected by the differential based on Class II values. It appears that a better alignment of butterfat values would result by applying a butterfat differential in line with the overall market utilization value of butterfat. In order to compensate for the value of skim milk which is replaced by the additional fat in high test milk the weighted average price of skim milk is deducted from the weighted average price of butterfat in all classes to distinguish such differential to a value of one-tenth of one percent variation from 3.5 milk.

19. The method of allowing shrinkage in Class IV milk on producer milk transferred to a second handler without being physically received in the pool plant of the first handler should be revised to permit the handler actually receiving the milk to obtain the shrinkage allowance.

Under the present order, allowance in Class IV milk for shrinkage (not to exceed 2 percent of receipts) on milk transferred from one handler to another accrues to the first handler even though he does not physically receive the milk. Since the second handler actually incurs the shrinkage it appears more feasible that the allowance should be given to the second handler rather than to the first handler.

This change will have no appreciable effect on the minimum prices received by producers or on the total cost of milk to handlers but will merely change the point of application of the shrinkage allowance. The change should facilitate transfers of milk between handlers.

It was also contended by the Milk Market Survey Committee, a group of handlers, at the hearing, and in their brief, that a proposal to "amend" the order by terminating it, which was not contained in the notice of hearing, should have been considered at the hearing and that the presiding officer erred in refusing to receive evidence thereon at the hearing. An offer of proof was made thereon by these handlers and received in the record as such. The Assistant Administrator properly limited the hearing notice to proposals to modify the order by the amendment process specified in the promulgation regulation, as amended, (7 CFR Supps. 901 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904). The presiding officer correctly ruled that the alleged issue was not to be considered at the hearing because it was not presented by the notice of hearing. Even if the alleged issue had properly been before the hearing the offer of proof did not show that producers in the number and milk volume required under section 8c (16) (B) of the act favor termination of the order. The offer of proof also did not indicate the existence of circumstances warranting termination pursuant to section 8c (16) (A) of the act. Accordingly, the request or application of the milk market survey committee for a reopening of the hearing because of such alleged errors of law is denied.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of the producer associations and various handlers subject to Order No. 75. The briefs contain statements of fact, conclusions, and arguments with respect to all of the proposals discussed at the hearing. Every point covered in the briefs was carefully considered, along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. Although all of the briefs do not contain specific requests to make proposed findings, it is assumed that the statements, conclusions, and arguments submitted were for this purpose and are treated accordingly. To the extent that such proposed findings and conclusions differ from the findings and conclusions contained herein, the requests to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing agreement regulating the handling of milk in the Cleveland, Ohio, marketing area" and "Order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered that all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order, as amended, which will be published with the decision.

This decision filed at Washington, D. C., this 15th day of August 1947.

[SEAL] CHARLES F. BRANNAN,
Acting Secretary of Agriculture.

§ 975.0 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904), a public hearing was held upon certain proposed amendments to the tentatively

approved marketing agreement and to the order regulating the handling of milk in the Cleveland, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(a) The said order as hereby amended,[1] and all of its terms and conditions, will tend to effectuate the declared policy of the act;

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the said order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said order, as hereby amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

The foregoing findings are supplementary and in addition to the findings made in connection with the original issuance of the aforesaid order; and all of said previous findings are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings set forth herein.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Cleveland, Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended; and the aforesaid order is hereby amended to read as follows:

§ 975.1 *Definitions.* The following terms have the following meanings:

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

(b) "Secretary" means the Secretary of Agriculture or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

(c) "Department of Agriculture" means the United States Department of Agriculture or such other Federal Agency authorized to perform the price reporting functions specified in § 975.6.

(d) "Market administrator" means the agency described in § 975.2.

(e) "Person" means any individual, partnership, corporation, association, or any other business unit.

(f) "Cleveland, Ohio, marketing area," hereinafter called the "marketing area," means all territory, including but not being limited to all municipal corporations, within Cuyahoga County and the township of Willoughby in Lake County; all in the State of Ohio.

(g) "Handler" means any person who: (1) Operates a pool plant; or (2) operates a nonpool plant and either directly or indirectly disposes of milk, skim milk, buttermilk, flavored milk, or flavored milk drinks (i) on a route extending into the marketing area; or (ii) to a pool plant described under § 975.3 (a) (1) which receives less than 50 percent of such plant's total receipts of skim milk and butterfat from producers or from other pool plants.

(h) "Producer" means any person with respect to milk produced by him having the approval of the health authority of any community in the marketing area for consumption as fluid milk in such community which milk is moved directly from his farm to:

(1) A pool plant (i) out of which a route is operated in such community, or (ii) furnishing milk to another pool plant out of which a route is operated in such community (but not including milk diverted from a nonpool plant for the account of such plant);

(2) A nonpool plant within April, May, June, or July for the account of a pool plant by diversion from a pool plant. Milk so diverted shall be deemed to have been received by the pool plant for whose account it was diverted; or

(3) A pool plant for the account of another pool plant by diversion from the latter pool plant. Milk so diverted shall be deemed to have been received by the pool plant for whose account it was diverted.

(i) "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(1) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(2) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

(j) "Nonhandler" means any person not a handler who operates a nonpool plant.

(k) "Producer-handler" means any person who:

(1) Produces milk but receives no milk from dairy farmers; and

(2) Operates a route extending into the marketing area.

(l) "Pool plant" means a plant designated pursuant to § 975.3 (a).

(m) "Nonpool plant" means any milk manufacturing or processing plant not a pool plant.

(n) "Other source milk" means all skim milk and butterfat not received from a producer or from a pool plant, but (1) contained in milk, skim milk, or cream; or (2) used to produce any milk product.

(o) "Route" means a delivery (including a sale from a plant store) of milk, skim milk, buttermilk, flavored milk, or flavored milk drink in fluid form to a wholesale or retail stop(s), including any eating place where such items are disposed of for consumption on or off the premises, other than a pool plant(s) or nonpool plant(s).

(p) "Delivery period" means the calendar month or the total portion thereof during which this order is in effect.

§ 975.2 *Market administrator*—(a) *Designation.* The agency for the administration hereof shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to this order:

(1) To administer its terms and provisions;

(2) To make rules and regulations to effectuate its terms and provisions;

(3) To receive, investigate, and report to the Secretary complaints of violations; and

(4) To recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this order, including, but not limited to, the following:

(1) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(3) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(4) Pay, out of the funds provided by § 975.9:

(i) The cost of his bond and of the bonds of his employees,

(ii) His own compensation, and

(iii) All other expenses, except those incurred under § 975.10, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(5) Keep such books and records as will clearly reflect the transactions provided for herein, and, upon request by the Secretary surrender the same to such other person as the Secretary may designate;

(6) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who within 10 days after the day upon which he is required to perform such acts, has not made (i) reports pursuant to § 975.4, or (ii) payments pursuant to §§ 975.8, 975.9, 975.10 or 975.11;

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(7) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(8) Upon request, supply on or before the 25th day after the end of each delivery period to each cooperative association not a handler with respect to producers whose membership in such cooperative association has been verified by the market administrator, a record of the pounds of milk received by each handler from member producers and the class utilization of such milk. For the purpose of this report such member milk shall be prorated to each class in the proportions that the total receipts of milk from producers by such handler were classified in each class;

(9) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or nonhandler upon whose utilization the classification of skim milk and butterfat for such handler depends;

(10) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each delivery period as follows:

(i) On or before the 6th day of such delivery period, the minimum prices for skim milk and butterfat in Class I milk and Class II milk computed pursuant to § 975.6;

(ii) On or before the 6th day after the end of such delivery period, the minimum prices for skim milk and butterfat in Class III milk computed pursuant to § 975.6; and

(iii) On or before the 14th day after the end of such delivery period, the uniform price computed pursuant to § 975.7 (d) and the butterfat differential computed pursuant to § 975.8 (c); and

(11) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information.

§ 975.3 *Pool plant*—(a) *Designation.* Subject to the conditions set forth in paragraphs (b) and (c) of this section, a pool plant means any of the following plants, except a bottling plant operated by a producer-handler:

(1) A bottling plant which is:

(i) Located inside the marketing area and out of which a route is operated; or

(ii) Located outside the marketing area with 10 percent or more of the aggregate weight of the skim milk and butterfat contained in its total route disposition of milk, skim milk, buttermilk, flavored milk, and flavored milk drink in fluid form on routes operated wholly or partially within the marketing area.

(2) A plant having approval of the appropriate health authority in the marketing area to supply milk to a pool plant described in subparagraph (1) of this paragraph and appearing on a list prepared and publicly announced by the market administrator for each delivery period not later than the 14th day after the end of such delivery period by posting in a conspicuous place in his office. Such list shall include:

(i) The following plants:

Location of plant (Feb. 1, 1946)	*Operator of plant on Feb. 1, 1946*
Ashland, Ohio	Cleveland Dairy Products Co. (Echo Dairy)
Conneaut, Ohio	Conneaut Creamery Co.
Dorset, Ohio	Dorset Milk Co.
East Liberty, Ohio	Dutchland Farms, Inc.
Tiffin, Ohio	Do.
Akron, Ohio (Route 7).	Mountrose Dairy Co.
Orrville, Ohio	Orrville Milk Condensing Co.
Trail, Ohio (P. O. Dundee, Ohio).	Do.
Woodville, Ohio	Soeder's Sons Co.
Attica, Ohio	Telling-Belle Vernon Co.
Beloit, Ohio	Do.
Jefferson, Ohio	Do.
Prospect, Ohio	Do.
Rome, Ohio	Do.
Wellington, Ohio	Do.
Lodi, Ohio	United Dairy Co.
Wooster, Ohio	Wooster Farm Dairies Co.
Cleveland, Ohio	Milk Producers Federation of Cleveland;

and

(ii) A plant, upon request to the market administrator by the plant operator, if such plant has been a pool plant pursuant to subparagraph (3) of this paragraph for nine or more consecutive delivery periods including that within which such request was made.

(3) A plant having approval of the appropriate health authority in the marketing area to do so which has, within the delivery period and within each of the five preceding delivery periods, furnished milk to a pool plant described in subparagraph (1) of this paragraph as follows:

(i) On 14 or more days in a total amount equal to 10 percent or more of its entire receipts of milk from dairy farmers during each such delivery period; or

(ii) In an amount equal to 50 percent or more of its entire receipts of milk from dairy farmers during each such delivery period:

Provided, That (*a*) any such plant meeting the requirements set forth in subdivisions (i) and (ii) of this subparagraph may become a pool plant beginning with the fourth consecutive delivery period within which such requirements have been met if prior request for pool plant status has been made to the market administrator by the plant operator; and (*b*) any such plant meeting the requirements set forth in subdivisions (i) and (ii) of this subparagraph for each of the six delivery periods immediately preceding April 1 of any year need not do so during April, May, June, and July of such year if written request to retain pool plant status for such four-month period is made of the market administrator by the handler prior to April 1 of such year.

(b) *Replacement.* A plant which replaces a pool plant shall acquire immediately the pool plant status of the replaced plant if the operator thereof shows to the satisfaction of the market administrator that 50 percent or more of the dairy farmers delivering milk to it previously had been producers at the pool plant so replaced.

(c) *Removals.* A plant shall be removed from the list of pool plants prepared pursuant to paragraph (a) (2) of this section under either of the following circumstances:

(1) Upon prior written request for such removal made by the plant operator; such removal to be effective at the beginning of the 1st delivery period (following the market administrator's receipt of such request) within which no milk was furnished by such plant to a pool plant described in paragraph (a) (1) of this section; or

(2) If such plant furnished less than 10 percent of its dairy farm supply of milk to a pool plant described in paragraph (a) (1) of this section within each of the three most recent delivery periods, excluding April, May, June and July: *Provided,* That this subparagraph shall not apply to the plant of the Milk Producers Federation of Cleveland.

§ 975.4 *Reports, records and facilities*—(a) *Delivery period reports of receipts and utilization.* On or before the 8th day after the end of each delivery period, each handler, except a producer-handler, shall report to the market administrator with respect to milk received from producers, other source milk received at a pool plant, skim milk and butterfat received in any form at a pool plant or at a nonpool plant from a pool plant, skim milk and butterfat received in any form at a nonpool plant engaged in the manufacture of ice cream or ice cream mix which is operated by such handler and is located within the marketing area, and all skim milk and butterfat received in any form from all sources at a nonpool plant referred to in § 975.1 (g) (2), in the detail and on forms prescribed by the market administrator:

(1) The quantities of butterfat and quantities of skim milk contained in (or used in the production of) such receipts, and their sources;

(2) The utilization of such receipts; and

(3) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

(b) *Other reports.* (1) Each producer-handler shall make reports to the market administrator at such times and in such manner as the market administrator may request.

(2) On or before the 25th day after the end of each delivery period, each handler who received milk from producers shall submit to the market administrator his producer pay roll for the delivery period, which shall show:

(i) The pounds of milk (and the percentage of butterfat contained therein) received from each producer;

(ii) The amount and date of payment to each producer (or to a cooperative association not a handler which is authorized to collect payment for the milk of such producer); and

(iii) The nature and amount of each deduction or charge involved in the payments referred to in subdivision (ii) of this subparagraph.

(c) *Records and facilities.* Each handler shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations, including those of his nonpool plants in

which any milk is received from a pool plant or of his nonpool plants located within the marketing area in which ice cream or ice cream mix is manufactured, and such facilities as, in the opinion of the market administrator, are necessary to verify reports or to ascertain the correct information with respect to:

(1) The receipts and utilization of all skim milk and butterfat required to be reported pursuant to paragraphs (a) or (b) (1) of this section;

(2) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product on hand at the beginning and at the end of each delivery period;

(3) The weights and tests for butterfat and for other contents of all milk and milk products handled; and

(4) Payments to producers and to cooperative associations.

§ 975.5 *Classification*—(a) *Skim milk and butterfat to be classified.* Skim milk and butterfat contained in milk, skim milk, and cream, or used to produce milk products, received from all sources by each handler at his (1) pool plant(s) and (2) nonpool plant(s) engaged in the manufacture of ice cream or ice cream mix and located within the marketing area, shall be classified separately (as skim milk or butterfat) pursuant to the following provisions of this section.

(b) *Classes of utilization.* Subject to the conditions set forth in paragraphs (d) and (e) of this section, skim milk and butterfat described in paragraph (a) of this section shall be classified by the market administrator on the basis of the following classes of utilization:

(1) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(i) Disposed of in fluid form as milk; skim milk or buttermilk, except for livestock feed; flavored milk or flavored milk drink; sweet or sour cream; any mixture of cream and milk (or skim milk); or eggnog;

(ii) Transferred as any item included in subdivision (i) of this subparagraph from a pool plant to the plant of a producer-handler, or transferred as any such item, except cream, to a nonpool plant located more than 160 miles from such pool plant by shortest highway distance as determined by the market administrator;

(iii) Accounted for as any item not listed under subdivision (i) of this subparagraph or as Class II milk or Class III milk; or

(iv) Such shrinkage on milk received from producers computed pursuant to paragraph (c) (4) of this section which is in excess of 2 percent of such receipts.

(2) Class II milk shall be all skim milk and butterfat used to produce ice cream, imitation ice cream, and other frozen desserts and mixes for similar products (liquid or powdered); or storage cream (cream placed in a licensed cold storage warehouse to remain for a period of not less than 30 days, and which is subject at all times, while in such warehouse to inspection by the market administrator to determine the physical presence of such cream).

(3) Class III milk shall be all skim milk and butterfat:

(i) Used to produce butter; butter oil; cheese (including cottage cheese); bulk condensed skim milk or whole milk (sweetened or unsweetened); evaporated or condensed milk (or skim milk) in hermetically sealed cans; casein; nonfat dry milk solids; dry whole milk; condensed or dry buttermilk; whey; powdered malted milk; lactose; and skim milk or buttermilk disposed of for livestock feed;

(ii) In actual shrinkage of milk received from producers computed pursuant to paragraph (c) (4) of this section, but not in excess of 2 percent of such receipts; and

(iii) In actual shrinkage of other source milk computed pursuant to paragraph (c) (4) of this section.

(c) *Shrinkage.* The market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in milk received from producers and in other source milk received in the following manner: *Provided,* That milk of producers transferred by a handler to another handler and received at the latter's (1) pool plant, or (2) nonpool plant engaged in the manufacture of ice cream or ice cream mix and located within the marketing area, without first having been received for purposes of weighing and testing in the transferring handler's pool plant shall be included in the receipts at such plant of the second handler for the purpose of computing his plant shrinkage and shall be excluded from the receipts at the pool plant of the transferring handler in computing his plant shrinkage.

(1) Compute the total shrinkage of skim milk and butterfat, respectively, by (i) combining the shrinkage thereof for all pool plants operated by the handler, and (ii) combining in a separate sum the shrinkage thereof for all nonpool plants operated by him to which any skim milk or butterfat has been transferred from any of his pool plants;

(2) Prorate the shrinkage of skim milk and butterfat, respectively, computed pursuant to subparagraph (1) (ii) of this paragraph, in such nonpool plants between (i) skim milk or butterfat, respectively, transferred from any of his pool plants, and (ii) skim milk or butterfat, respectively, received from all other sources;

(3) Add to the shrinkage of skim milk and butterfat, respectively, computed pursuant to subparagraph (1) (i) of this paragraph, the shrinkage on skim milk or butterfat, respectively, transferred from the handler's pool plant(s) to his nonpool plant(s) computed pursuant to subparagraph (2) of this paragraph; and

(4) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to subparagraph (3) of this paragraph between that in milk received from producers and in other source milk at his pool plants, after deducting from the total receipts therein the receipts from pool plants other than his own.

(d) *Transfers.* Skim milk or butterfat transferred as any item listed in paragraph (b) (1) (i) of this section from a pool plant in a manner described in subparagraphs (1), (2), or (3) of this paragraph, shall be classified as follows:

(1) As Class I milk, if transferred to another pool plant unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 8th day after the end of the delivery period within which such transfer was made: *Provided,* That skim milk or butterfat assigned to a particular class shall be limited to the amount thereof remaining in such class in the pool plant of the transferee handler after the subtraction of other source milk pursuant to paragraphs (g) (4) and (h) of this section, and any excess of such transferred skim milk or butterfat, respectively, shall be assigned in series beginning with the next lowest-priced available class; or

(2) As Class I milk, if transferred to a nonpool plant (except to a plant described in paragraph (b) (1) (ii) of this section) unless (i) other utilization is mutually indicated in writing to the market administrator by both the buyer and seller on or before the 8th day after the end of the delivery period within which such transfer was made, (ii) the buyer maintains books and records showing utilization of all skim milk and butterfat at his plant which are made available to the market administrator for audit, and (iii) such buyer's plant had actually used not less than an equivalent amount of skim milk or butterfat in the use indicated in such statement: *Provided,* That if such nonpool plant had not actually used an equivalent amount of skim milk or butterfat in such indicated use, the remaining pounds shall be classified in the next lowest-priced available class of utilization as if the classes of utilization set forth in paragraph (b) of this section were applicable to such nonpool plant; or

(3) As Class I milk if transferred in bulk form to (i) a manufacturer of soup, candy, or bakery products for use in such manufacturing operations, or (ii) any retail establishment which disposes of milk in fluid form.

(e) *Responsibility of handlers and reclassification of milk.* (1) All skim milk and butterfat shall be classified as Class I milk unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(2) Any skim milk or butterfat classified (except that classified pursuant to paragraph (b) (1) (ii) of this section) in one class shall be reclassified if used or reused by such handler or by another handler in another class.

(f) *Computation of the skim milk and butterfat in each class.* For each delivery period the market administrator shall correct for mathematical and for other obvious errors the delivery period report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk for such handler.

(g) *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(1) Subtract from the total pounds of butterfat in Class III milk (other than butterfat in butter), the pounds of butterfat shrinkage allowed pursuant to paragraph (b) (3) (ii) of this section;

(2) Subtract from the pounds of butterfat in Class I milk, the smaller of the following:

(i) The pounds, if any, by which the butterfat in milk received from producers and pool plants is less than 105 percent of the pounds of butterfat in such handler's milk, skim milk, butermilk, flavored milk and flavored milk drink classified as Class I milk (exclusive of any reconstituted skim milk) pursuant to paragraph (b) (1) (i) of this section, not including such Class I milk transferred to pool plants or to nonpool plants; or

(ii) The pounds of butterfat in other source milk received;

(3) Subtract from the pounds of butterfat in other source milk, the pounds deducted pursuant to subparagraph (2) of this paragraph;

(4) Subtract from the pounds of butterfat remaining in each class, after making the deduction pursuant to subparagraph (2) of this paragraph, in series beginning with the lowest-priced utilization, the pounds of butterfat remaining in other source milk after making the deduction pursuant to subparagraph (3) of this paragraph;

(5) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat received from other handlers in such classes pursuant to paragraph (d) of this section; and

(6) Add to the remaining pounds of butterfat in Class III milk (other than butterfat in butter), the pounds subtracted pursuant to subparagraph (1) of this paragraph; or if the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series beginning with the lowest-priced utilization.

(h) *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in paragraph (g) of this section.

§ 975.6 *Minimum prices*—(a) *Basic formula price to be used in determining prices of Class I milk and Class II milk.* The basic formula price per hundredweight of milk to be used in determining the Class I milk and Class II milk prices for each delivery period, pursuant to paragraphs (b) and (c) of this section, shall be the highest of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to subparagraphs (1), (2), and (3) of this paragraph.

(1) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the next preceding delivery period at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture by the companies indicated below:

Present Operator and Location

Borden Co.:
- Black Creek, Wis.
- Greenville, Wis.
- Mt. Pleasant, Mich.
- New London, Wis.
- Orfordville, Wis.

Carnation Co.:
- Berlin, Wis.
- Jefferson, Wis.
- Chilton, Wis.
- Oconomowoc, Wis.
- Richland Center, Wis.
- Sparta, Mich.

Pet Milk Co.:
- Belleville, Wis.
- Coopersville, Mich.
- Hudson, Mich.
- New Glarus, Wis.
- Wayland, Mich.

White House Milk Co.:
- Manitowoc, Wis.
- West Bend, Wis.

(2) The price per hundredweight resulting from the following formula:

(i) Multiply by 6 the average wholesale price per pound of 92-score butter at Chicago as reported by the Department of Agriculture for the next preceding delivery period;

(ii) Add an amount equal to 2.4 times the average weekly prevailing price per pound of "Twins" during the next preceding delivery period on the Wisconsin Cheese Exchange at Plymouth, Wisconsin; Provided, That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price per pound of "Cheddars" shall be used; and

(iii) Divide by 7, add 30 percent thereof, and then multiply by 3.5.

(3) The price per hundredweight computed by adding together the plus amounts pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the average wholesale price per pound of 92-score butter at Chicago, as reported by the Department of Agriculture for the next preceding delivery period, subtract 3 cents, add 20 percent thereof, and then multiply by 3.5; and

(ii) From the average of the carlot prices per pound of nonfat dry milk solids for human consumption, spray and roller process, f. o. b. manufacturing plants, as published for the Chicago area for the next preceding delivery period by the Department of Agriculture, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.965.

(b) *Class I milk prices.* The respective minimum prices per hundredweight to be paid by each handler, f. o. b. the marketing area, for skim milk and butterfat in milk received from producers or from a pool plant of a cooperative association, during the delivery period, which is classified as Class I milk, shall be as follows, as computed by the market administrator:

(1) Add to the basic formula price the following amount for the delivery period indicated: May and June, $0.85; September, October, November, December, January, and February, $1.15; and all others, $1.00: *Provided*, That in no event shall the price resulting from this subparagraph be lower than $4.79 for the months of September to December 1947, inclusive: *Provided, further*, That the price resulting from this subparagraph for January 1948, shall not be lower than the effective price for December 1947, less 44 cents, and that the price for February 1948, shall not be lower than the effective price for January 1948, less 44 cents: *And provided also*, That the minimum price of sweet or sour cream, or of any mixture of cream and milk (or skim milk), in Class I milk shall be the price otherwise applicable pursuant to this subparagraph less 15 cents.

(2) The price of butterfat shall be the amount obtained in subparagraph (1) of this paragraph, multiplied by 20.

(3) The price of skim milk shall be computed by (i) multiplying the price for butterfat pursuant to subparagraph (2) of this paragraph by 0.035; (ii) subtracting such amount from the amount obtained in subparagraph (1) of this paragraph; (iii) dividing such net amount by 0.965; and (iv) rounding off to the nearest full cent.

(c) *Class II milk prices.* The respective minimum prices per hundredweight to be paid by each handler, f. o. b. the marketing area, for skim milk and butterfat in milk received from producers or from a pool plant of a cooperative association, during the delivery period, which is classified as Class II milk, shall be as follows, as computed by the market administrator:

(1) Add to the basic formula price the following amount for the delivery period indicated: May and June, $0.25; September, October, November, December, January, and February, $0.55; and all others, $0.40.

(2) The price of butterfat shall be the amount obtained in subparagraph (1) of this paragraph, multiplied by 20: *Provided*, That in no event shall the price of butterfat pursuant to this subparagraph be less than the price computed pursuant to paragraph (d) (1) of this section prior to the proviso therein.

(3) The price of skim milk shall be computed by (i) multiplying the price for butterfat pursuant to subparagraph (2) of this paragraph prior to the application of the proviso by 0.035; (ii) subtracting such amount from the amount obtained in subparagraph (1) of this paragraph; (iii) dividing such net amount by 0.965; and (iv) rounding off to the nearest full cent.

(d) *Class III milk prices.* The respective minimum prices per hundredweight to be paid by each handler, f. o. b. his plant, for skim milk and butterfat in milk received from producers or from a pool plant of a cooperative association, which is classified as Class III milk shall be as follows, as computed by the market administrator:

(1) The price per hundredweight of butterfat shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the Department of Agriculture for the delivery period, multiplied by 120: *Provided*, That the price per hundredweight of butterfat used to produce butter or contained in shrinkage pursuant to § 975.5 (b) (3) (ii) shall be such price less $3.60;

(2) Except as set forth in subparagraph (3) of this paragraph, the price per hundredweight of skim milk (calculated to the nearest full cent) shall be the average carlot price per pound of nonfat dry milk solids for human consumption, roller process, f. o. b. manufacturing plants, as published for the Chicago area for the delivery period by the Department of Agriculture, less 5.5 cents and then multiplied by 8.5; and

(3) When the higher of the prices computed pursuant to paragraphs (a) (1) or (a) (2) of this section is higher than the price of 100 pounds of milk of 3.5 percent butterfat content computed by adding the value of 3.5 pounds of butterfat pursuant to subparagraph (1) of this paragraph, prior to the application of the proviso therein, to the value of 96.5 pounds of skim milk pursuant to subparagraph (2) of this paragraph, the price per hundredweight of skim milk used to produce bulk condensed skim milk or whole milk (sweetened or unsweetened), evaporated or condensed milk (or skim milk) in hermetically sealed cans, cottage cheese, and powdered malted milk shall be computed as follows and used in lieu of the price computed pursuant to subparagraph (2) of this paragraph:

(i) From the higher of the prices computed pursuant to paragraphs (a) (1) or (a) (2) of this section deduct 25 cents;

(ii) Multiply the result by .7;

(iii) Subtract such result from the figure obtained in (i) of this subparagraph; and

(iv) Divide the result by 0.965, and round off to the nearest full cent.

(e) *Emergency price provisions.* Whenever the provisions hereof require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose, the market administrator shall add to the specified price the amount of any subsidy, or other similar payment, being made by any Federal agency in connection with the milk, or product, associated with the price specified: *Provided,* That if for any reason the price specified is not reported or published as indicated, the market administrator shall use the applicable maximum price established by regulations of any Federal agency plus the amount of any such subsidy or other similar payment: *Provided further,* That if the specified price is not reported or published and there is no applicable maximum uniform price, or if the specified price is not reported or published and the Secretary determines that the market price is below the applicable maximum uniform price, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

§ 975.7 *Determination of uniform price to producers*—(a) *Computation of pool value for each handler operating a pool plant.* Subject to the location adjustment provided by paragraph (b) of this section, the pool value for each delivery period for each handler operating a pool plant shall be a sum of money computed by the market administrator by multiplying by the applicable prices for skim milk and butterfat in each class pursuant to § 975.6, the skim milk and butterfat in milk received from producers according to their classification pursuant to paragraphs (g) and (h) of § 975.5, and adding together the resulting amounts: *Provided,* That if such handler, after subtracting all receipts of skim milk and butterfat, respectively other than in milk received from producers, has a utilization of skim milk or butterfat greater than has been accounted for in milk received from producers, there shall be added a further amount equal to the quantity of such excess of skim milk or butterfat multiplied by the applicable prices.

(b) With respect to the actual weight of (1) milk, cream, or any other item named in Class I milk and Class II milk which is moved directly to the marketing area from a pool plant located outside the marketing area, and (2) Class I milk and Class II milk disposed of outside the marketing area from a pool plant so located, there shall be deducted, in the computation of the handler's pool value, the following amount per hundredweight thereof applicable for the location of such plant by shortest highway distance from the Public Square in Cleveland, Ohio, such distance to be determined by the market administrator:

Mileage zone	*Cents per hundredweight*
Not more than 30 miles	0
More than 30 miles but not more than 45 miles	15
More than 45 miles but not more than 60 miles	17
More than 60 miles but not more than 75 miles	19
More than 75 miles but not more than 90 miles	21
Within each 15 mile zone thereafter—an additional 1 cent.	

Provided, That such adjustment shall be limited to an amount of milk, cream, or other item so moved which could be derived from the milk received from producers at such plant.

(c) *Computation of obligation to the producer-settlement fund for certain handlers operating nonpool plants.* (1) For each delivery period the obligation to the producer-settlement fund for each handler (except a producer-handler) who operates a nonpool plant out of which a route is operated which extends into the marketing area, shall be computed by the market administrator by multiplying by the respective prices for skim milk and butterfat in Class I milk the total pounds of skim milk and butterfat disposed of as milk, skim milk, buttermilk, flavored milk, or flavored milk drink within such delivery period on each such route, and subtracting therefrom an amount computed by multiplying such volumes of skim milk and butterfat by the higher of the prices for skim milk and butterfat, respectively, in Class III milk.

(2) For each delivery period, the obligation to the producer-settlement fund for each handler who operates a nonpool plant and supplies milk, skim milk, buttermilk, flavored milk, or flavored milk drink to a plant designated as a pool plant pursuant to § 975.3 (a) (1), which latter plant received within such delivery period less than 50 percent of its total receipts of skim milk and butterfat from producers or from other pool plants, shall be computed by the market administrator by multiplying by the difference between the respective prices for skim milk and butterfat in Class I milk and Class III milk, the amount of such receipts from such nonpool plant which are Class I milk at the receiving pool plant.

(d) *Computation of uniform price.* For each delivery period, the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content, f. o. b. the marketing area, received from producers by:

(1) Combining into one total the pool values computed under (a) of this section for all handlers who reported pursuant to § 975.4 (a) for such delivery period, except those in default in payments required pursuant to § 975.8 (e) for the preceding delivery period;

(2) Adding an amount representing the monies received in payment of obligations computed under paragraph (c) of this section;

(3) Adding the aggregate of the values of all allowable location adjustments computed at the maximum rates for the appropriate zones as set forth in § 975.8 (b);

(4) Adding an amount representing not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Subtracting, if the weighted average butterfat test of all milk received from producers represented by the values included in subparagraph (1) of this paragraph is greater than 3.5 percent, or adding, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total hundredweight of butterfat represented by the variance of such weighted average butterfat test from 3.5 percent, by the butterfat differential computed pursuant to § 975.8 (c) multiplied by 1,000;

(6) Dividing by the hundredweight of milk received from producers represented by the values included in subparagraph (1) of this paragraph; and

(7) Subtracting not less than 4 cents nor more than 5 cents.

(e) *Notification.* The market administrator shall notify:

(1) On or before the 14th day after the end of each delivery period, each handler who operates a pool plant of:

(i) The amounts and pool values of his skim milk and butterfat in each class and the totals of such amounts and values;

(ii) The uniform price;

(iii) The amount due such handler from the producer-settlement fund or the amount to be paid by such handler to the producer-settlement fund, as the case may be; and

(iv) The totals of the minimum amounts to be paid by such handler pursuant to §§ 975.8, 975.9, 975.10, and 975.11.

(2) On or before the 14th day after the end of each delivery period each handler described in § 975.1 (g) (2) of:

(i) The pounds of his skim milk and butterfat in milk, skim milk, buttermilk, flavored milk, and flavored milk drink

subject to the provisions of paragraph (c) of this section; and

(ii) The amount due the producer-settlement fund from each such handler.

§ 975.8 *Payment for milk*—(a) *Time and method of payment.* (1) Except as provided by subparagraph (2) of this paragraph, on or before the 20th day after the end of each delivery period, each handler (except a cooperative association) shall pay each producer for milk received from him within such delivery period, not less than an amount of money computed by multiplying the total pounds of such milk by the uniform price, less the location adjustment pursuant to paragraph (b) of this section and adjusted by the butterfat differential pursuant to paragraph (c) of this section: *Provided,* That if by such date such handler has not received full payment for such delivery period pursuant to paragraph (f) of this section, he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(2) On or before the 19th day after the end of each delivery period, each handler shall pay a cooperative association not a handler, with respect to milk of producers for which it has received written authorization to collect payment, a total amount not less than the sum of the individual amounts otherwise payable to such producers pursuant to subparagraph (1) of this paragraph.

(3) On or before the 15th day after the end of each delivery period, each handler shall pay a cooperative association which is a handler, with respect to skim milk and butterfat received by him from a pool plant operated by such cooperative association, not less than an amount computed by multiplying the minimum prices for skim milk and butterfat, respectively, in each class, subject to the applicable location adjustment provided by § 975.7 (b), by the hundredweight of skim milk and butterfat, respectively, in each class pursuant to § 975.5.

(b) *Location adjustments to producers.* In making payments pursuant to paragraphs (a) (1) and (a) (2) of this section a handler may deduct, with respect to all milk received from producers at a plant located outside the marketing area, not more than the following respective amount per hundredweight of milk applicable for the location of such plant by shortest highway distance from the Public Square in Cleveland, Ohio, such distance to be determined by the market administrator:

Mileage zone	*Cents per hundredweight*
Not more than 30 miles	0
More than 30 miles but not more than 45 miles	15
More than 45 miles but not more than 60 miles	17
More than 60 miles but not more than 75 miles	19
More than 75 miles but not more than 90 miles	21
Within each 15 mile zone thereafter—an additional 1 cent.	

(c) *Butterfat differential.* In making payments pursuant to paragraphs (a) (1) or (a) (2) of this section there shall be added to or subtracted from, the uniform price per hundredweight, for each one-tenth of 1 percent of such butterfat content in milk above or below 3.5 percent, as the case may be, a butterfat differential computed by the market administrator as follows:

(1) Multiply the hundredweight of butterfat in each class computed pursuant to § 975.5 (g) by the applicable minimum price for butterfat in such class computed pursuant to § 975.6;

(2) Add into one total the butterfat values obtained in subparagraph (1) of this paragraph and divide such total by the total hundredweight of butterfat in all classes computed pursuant to § 975.5 (g) to determine a weighted average price for butterfat;

(3) Subtract from the weighted average price per hundredweight of butterfat computed in subparagraph (2) of this paragraph, a weighted average price per hundredweight of skim milk computed as follows:

(i) Multiply the hundredweight of skim milk computed in each class pursuant to § 975.5 (h) by the respective minimum price for skim milk in such class computed pursuant to § 975.6; and

(ii) Add into one total the skim milk values so obtained for all classes and divide such total by the total hundredweight of skim milk in all classes computed pursuant to § 975.5 (h); and

(4) Divide by 1,000 the price of butterfat resulting pursuant to subparagraph (3) of this paragraph, and round off to the nearest tenth of a cent.

(d) *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made pursuant to paragraph (e) of this section and out of which he shall make all payments pursuant to paragraph (f) of this section.

(e) *Payments to the producer-settlement fund.* On or before the 16th day after the end of each delivery period, each handler:

(1) Whose pool value is required to be computed pursuant to § 975.7 (a), shall pay to the market administrator the amount by which such pool value for such delivery period is greater than the total minimum amount required to be paid by him pursuant to paragraphs (a) (1) and (a) (2) of this section; and

(2) Whose obligation is required to be computed pursuant to § 975.7 (c), shall pay to the market administrator such obligation for such delivery period.

(f) *Payment out of the producer-settlement fund.* On or before the 18th day after the end of each delivery period, the market administrator shall pay to each handler the amount by which such handler's pool value pursuant to § 975.7 (a) is less than the total minimum amount required to be paid by him pursuant to paragraphs (a) (1) or (a) (2) of this section, less any unpaid obligations of such handler to the market administrator pursuant to paragraph (e) of this section, §§ 975.9, 975.10, or 975.11: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 975.9 *Expense of administration.* As his prorata share of the expense incurred pursuant to § 975.2 (c) (4), each handler shall pay the market administrator on or before the 16th day after the end of each delivery period, three cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, to be announced by the market administrator on or before the 14th day after the end of such delivery period, with respect to all receipts within the delivery period, of milk from producers at pool plants (including such handler's own production), of other source milk at pool plants, except that used in the manufacture of ice cream or ice cream mix, and of other source milk on which payment is required pursuant to § 975.5 (c).

§ 975.10 *Marketing Services*—(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to paragraphs (a) (1) and (a) (2) of § 975.8, with respect to all milk received from each producer (except milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct four cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, to be announced by the market administrator on or before the 14th day after the end of each delivery period; and, on or before the 16th day after the end of such delivery period, shall pay such deductions to the market administrator. Such monies shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers and to provide such producers with market information; such services to be performed in whole or in part by the market administrator, or by an agent engaged by and responsible to him.

(b) *Cooperative associations.* In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to paragraphs (a) (1), and (a) (2) of § 975.8 as may be authorized by such producers, and pay such deductions on or before the 16th day after the end of each delivery period to the cooperative asso-

ciation rendering such services of which such producers are members.

§ 975.11 *Adjustment of accounts*—(a) *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (1) the market administrator from such handler, (2) such handler from the market administrator, or (3) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

(b) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 975.8, 975.9, 975.10 or (a) of this section shall be increased one-half of one percent on the first day of the calendar month next following the due date of such obligation and on the first day of each calendar month thereafter until such obligation is paid.

§ 975.12 *Application of provisions*—(a) *Exempt milk.* Milk received at a plant of a handler, the handling of which the Secretary determines to be subject to the pricing and payment provisions of any other Federal milk marketing agreement or order issued pursuant to the act for any fluid milk marketing area shall not be subject to the pricing and payment provisions hereof.

(b) *Milk caused to be delivered by cooperative associations.* Milk referred to herein as received from producers by a handler shall include milk of producers caused to be delivered to such handler by a cooperative association which is not a handler and which is authorized to collect payment for such milk.

§ 975.13 *Effective time.* The provisions hereof, or of any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 975.14 *Suspension or termination*—(a) *When suspended or terminated.* The Secretary shall, whenever he finds that this order, or any provision thereof, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this order or any such provision thereof.

(b) *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this order, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

(c) *Liquidation.* Upon the suspension or termination of the provisions hereof, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

§ 975.15 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions hereof.

§ 975.16 *Separability of provisions.* If any provision hereof, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions hereof, to other persons or circumstances shall not be affected thereby.

[F. R. Doc. 47-7815; Filed, Aug. 20, 1947; 8:47 a. m.]

NOTICES

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616, E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 9571]

KOSUKE NAKANO

In re: Bank account, bonds, cash, checks and stamps owned by Kosuke Nakano. D-39-2000-A-1, D-39-2000-E-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kosuke Nakano, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan);

2. That the property described as follows:

a. That certain debt or other obligation owing to Kosuke Nakano, by The Seaboard Citizens National Bank of Norfolk, 109-117 East Main Street, Norfolk, Virginia, arising out of a checking account, entitled Blocked Fund Account, Kosuke Nakano, Japanese National, and any and all rights to demand, enforce and collect the same,

b. Two (2) United States of America Defense Bonds, Series E, of $1,000.00 face value, bearing the numbers M-400905E and M400906E, registered in the name of Mr. K. Nakano, presently in the custody of The Seaboard Citizens National Bank of Norfolk, 109-117 East Main Street, Norfolk, Virginia, together with any and all rights thereunder and thereto,

c. Cash in the amount of $16.00, presently in the possession of the Federal Reserve Bank of New York, New York, New York.

d. Four (4) United States of America, eight cent, air-mail postage stamps, presently in the possession of the Federal Reserve Bank of New York, New York, New York.

e. That certain debt or other obligation owing to Kosuke Nakano, by Bank of America National Trust & Savings Association, San Francisco, California, in the amount of $70.00, as of March 5, 1946, and any and all accruals thereto, evidenced by two (2) travelers checks, numbered A269893, for $50.00, and A2315305 for $20.00, issued by Bank of America National Trust & Savings Association, and presently in the possession of the Federal Reserve Bank of New York, New York, New York, and any and all rights to demand, enforce and collect the aforementioned debt or other obligation, together with any and all rights in, to and under, including particularly, but not limited to, the rights to possession and presentation for collection and payment of the aforesaid travelers checks,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 31, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7813; Filed, Aug. 20, 1947; 11:50 a. m.]

[Vesting Order 9587]

A. YOSHIYAMA ET AL.

In re: Stock owned by the personal representatives, heirs, next of kin, legatees and distributees of A. Yoshiyama, deceased. F-39-4372-D-2, F-39-4372-D-3, F-39-4372-D-4.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the personal representatives, heirs, next of kin, legatees and distributees of A. Yoshiyama, deceased, who there is reasonable cause to believe are residents of Japan, are nationals of a designated enemy country (Japan);

2. That the property described as follows:

a. Thirteen (13) shares of $2.00 par value capital stock of Transamerica Corporation, 4 Columbus Avenue, San Francisco, California, a corporation organized under the laws of the State of Delaware, evidenced by certificates numbered SFB14066 for four and one-half (4½) shares, SFG40839 for one-half (½) share, SFK34508 for seven and one-half (7½) shares and SFP81211 for one-half (½) share, registered in the name of A. Yoshiyama, together with all declared and unpaid dividends thereon,

b. Three (3) shares of $12.50 par value common capital stock of Bank of America, National Trust & Savings Association, 300 Montgomery Street, San Francisco, California, evidenced by certificates numbered A63517 for two (2) shares and G987 for one (1) share, registered in the name of A. Yoshiyama, together with all declared and unpaid dividends thereon,

c. One (1) share of $25.00 par value capital stock of Bank of America, N. A. c/o National City Bank of New York, 55 Wall Street, New York, New York, evidenced by a certificate numbered CTF058895, registered in the name of A. Yoshiyama, together with all declared and unpaid dividends thereon, and all rights under a Merger with National City Bank of New York, effective December 27, 1931, and

d. One-half (½) share of capital stock of Intercoast Trading Company (now Transamerica Corporation), evidenced by a certificate numbered A20021, together with all declared and unpaid dividends thereon, and all rights of exchange for Transamerica Corporation stock,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by the aforesaid nationals of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of A. Yoshiyama, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 31, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7814; Filed, Aug. 20, 1947; 11:50 a. m.]

[Vesting Order 9595]

MARY T. OLBRICH

In re: Estate of Mary T. Olbrich, deceased. File D-28-12001; E. T. sec. No. 16181.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Theresia Klapper and Agnes Kinzel, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof in and to the estate of Mary T. Olbrich, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Alphons Olbrich of Philadelphia, Pa., as executor, acting under the judicial supervision of the Orphans' Court of Philadelphia County, Pennsylvania;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on August 7, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7780; Filed, Aug. 19, 1947; 8:57 a. m.]

[Vesting Order 9596]

ALOISIA KOZONICH PETROV

In re: Estate of Aloisia Kozonich Petrov, deceased. File No. D-34-777; E. T. sec. 11653.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Sandor Petrov, Jr., Ferdinand Petrov, Gyula Petrov, Ferenc Petrov, Alujzia Petrov, Adel Petrov, Jeno Petrov and Margit Petrov Fabok, whose last known address is Hungary, are residents of Hungary and nationals of a designated enemy country (Hungary);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the estate of Aloisia Kozonich Petrov, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Hungary);

3. That such property is in the process of administration by Nicholas Phillips, as executor, acting under the judicial supervision of the Surrogate's Court of New York County, New York;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Hungary).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on August 7, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7781; Filed, Aug. 19, 1947; 8:57 a. m.]

[Vesting Order 9598]

LOUIS SAUER

In re: Estate of Louis Sauer, deceased. File No. D-28-11819; E. T. sec. 16022.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Agatha Quack, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person identified in subparagraph 1 hereof in and to the Estate of Louis Sauer, deceased, is property payable or deliverable to, or claimed by, the aforesaid national of a designated enemy country (Germany);

3. That such property is in the process of administration by Joseph H. Burkard, as Executor, acting under the judicial supervision of the Surrogate's Court, Suffolk County, State of New York;

and it is hereby determined:

4. That to the extent that the person identified in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on August 7, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7782; Filed, Aug. 19, 1947; 8:57 a. m.]

[Vesting Order 9599]

FRIEDERIKE PAULINA SCHALL

In re: Estate of Friederike Paulina Schall, also known as Frieda Schall, deceased. File No. D-28-11692; E. T. sec. 15890.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Caroline Schall, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person identified in subparagraph 1 hereof, in and to the estate of Friederike Paulina Schall, also known as Frieda Schall, deceased, is property payable or deliverable to, or claimed by the aforesaid national of a designated enemy country (Germany);

3. That such property is in the process of administration by Katharine Siefert and Julia M. Stuntz, as executrices, acting under the judicial supervision of the Surrogate's Court of Erie County, State of New York;

and it is hereby determined:

4. That to the extent that the person identified in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on August 7, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7783; Filed, Aug. 19, 1947; 8:57 a. m.]

[Vesting Order 9600]

CONRAD W. SCHULER

In re: Estate of Conrad W. Schuler, deceased. File D-28-11964; E. T. sec. 16151.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Louise Muller, Elsie M. Muller, Gretchen Fischer and Kunigunda Fuhres, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof in and to the estate of Conrad W. Schuler, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by William H. Fehl and Conrad W. Young of Pittsburgh, as executors, acting under the judicial supervision of the Orphans' Court of Allegheny County, Pittsburgh, Pa.;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on August 7, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-7784; Filed, Aug. 19, 1947; 8:57 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-896]

UNITED GAS PIPE LINE CO.

ORDER FIXING DATE OF HEARING

Upon consideration of the application filed April 29, 1947, by United Gas Pipe Line Company (Applicant), a Delaware corporation having its principal place of business at Shreveport, Louisiana, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, approving the construction and authorizing the continued operation of certain additional natural-gas facilities, subject to the jurisdiction of the Commission, as fully described in such application on file with the Commission and open to public inspection; and

It appearing to the Commission that:

(a) The aforementioned facilities were constructed for the purpose of enabling Applicant to deliver natural gas for resale in the City of Pineland and the Village of Bronson, both in the State of Texas;

(b) This proceeding is a proper one for disposition under the provisions of Rule 32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure (effective September 11, 1946), Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on May 24, 1947 (12 F. R. 3387).

The Commission, therefore, orders that:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure (effective September 11, 1946), a hearing be held on September 9, 1947, at 9:30 a. m. (e. d. s. t.) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such application; *Provided, however,* That the Commission may after a non-contested hearing forthwith dispose of the proceeding pursuant to the provisions of Rule 32 (b) of the Commission's rules of practice and procedure (effective September 11, 1946).

(B) Interested State commissions may participate as provided by Rules 8 and 37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Date of issuance: August 15, 1947.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 47-7810; Filed, Aug. 20, 1947; 8:46 a. m.]

[Docket No. IT-5829]

ARKANSAS POWER & LIGHT CO.

ORDER FIXING DATE OF HEARING

Upon consideration of the reclassification and original cost studies of Electric Plant as at January 1, 1937, filed June 3, 1940, by Arkansas Power & Light Company; the Commission staff's report thereon served on the Company with the Commission's order of June 15, 1943, and the response thereto filed September 18, 1943, by the Company; the Commission staff's supplemental report served on the Company with the Commisson's order of September 27, 1944, and the response thereto filed November 27, 1944, by the Company; and the Company's petition to dismiss filed November 22, 1944;

The Commission finds that: It is appropriate to carry out the provisions of the Federal Power Act that a hearing be held in this matter as hereinafter provided;

The Commission orders that:

(A) A public hearing be held commencing on December 1, 1947, at 10: 00 a. m. (e. s. t.) in the Hearing Room of the Federal Power Commission, 18th and Pennsylvania Avenue NW., Washington, D. C., respecting the matters involved and the issues arising out of the proceedings in this matter;

(B) At such hearing the burden of proof to justify and to support by satisfactory proof every accounting entry, made or proposed to be made, which is brought into issue by the proceedings in this matter, shall be upon Arkansas Power & Light Company;

(C) At such hearing Arkansas Power & Light Company shall submit and support by satisfactory evidence an appropriate plan or plans for the disposition of any and all amounts which may, upon determination of the issues in this matter, be required to be classified in Account 107, Electric Plant Adjustments, or in Account 108.15, Common Utility Plant Acquisition Adjustments.

(D) Interested State commissions may participate in said hearing as provided in the Commission's rules.

Date of issuance: August 15, 1947.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 47-7809; Filed, Aug. 20, 1947; 8:46 a. m.]

[Docket No. IT-5971]

SOUTHWESTERN POWER ADMINISTRATION

NOTICE OF ORDER AMENDING RATE SCHEDULE

AUGUST 18, 1947.

Notice is hereby given that, on August 15, 1947, the Federal Power Commission issued its order entered August 15, 1947, amending rate schedule in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 47-7820; Filed, Aug. 20, 1947; 8:47 a. m.]

[Docket No. IT-6069]

SIERRA PACIFIC POWER CO.

NOTICE OF ORDER AUTHORIZING AND APPROVING ISSUANCE OF BONDS

AUGUST 18, 1947.

Notice is hereby given that, on August 15, 1947, the Federal Power Commission issued its order entered August 15, 1947, authorizing and approving issuance of bonds in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 47-7821; Filed, Aug. 20, 1947; 8:47 a. m.]

FEDERAL TRADE COMMISSION

[Docket No. 5495]

RAY-BELL FILMS, INC.

ORDER APPOINTING TRIAL EXAMINER

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 4th day of August A. D. 1947.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission.

It is ordered, That Frank Hier, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

Upon the completion of the taking of testimony and the receipt of evidence in support of the allegations of the complaint, the Trial Examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondents. The Trial Examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommeded decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 47-7823; Filed, Aug. 20, 1947; 8:48 a. m.]

[Docket No. 5496]

ALEXANDER FILM CO.

ORDER APPOINTING TRIAL EXAMINER

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 4th day of August A. D. 1947.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It is ordered, That Frank Hier, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

Upon the completion of the taking of testimony and the receipt of evidence in support of the allegations of the complaint, the Trial Examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondents. The Trial Examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 47-7822; Filed, Aug. 20, 1947; 8:47 a. m.]

[Docket No. 5497]

UNITED FILM AD SERVICE, INC.

ORDER APPOINTING TRIAL EXAMINER

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 4th day of August A. D. 1947.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to

authority vested in the Federal Trade Commission,

It is ordered, That Frank Hier, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

Upon the completion of the taking of testimony and the receipt of evidence in support of the allegations of the complaint, the Trial Examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondents. The Trial Examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 47-7824; Filed Aug. 20, 1947; 8:48 a. m.]

[Docket No. 5498]

MOTION PICTURE ADVERTISING SERVICE CO., INC.

ORDER APPOINTING TRIAL EXAMINER

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 4th day of August A. D. 1947.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It is ordered, That Frank Hier, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

Upon the completion of the taking of testimony and the receipt of evidence in support of the allegations of the complaint, the Trial Examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondents. The Trial Examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 47-7825; Filed, Aug. 20, 1947; 8:48 a. m.]

[Docket No. 5508]

AMERICAN IRON & STEEL INSTITUTE ET AL.

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR INITIAL HEARING

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 15th day of August A. D. 1947.

In the matter of American Iron & Steel Institute, an incorporated trade association, its directors, officers and members; and United States Steel Corporation and certain of its subsidiaries, Bethlehem Steel Corporation and certain of its subsidiaries, Republic Steel Corporation and certain of its subsidiaries, Youngstown Sheet & Tube Company and one of its subsidiaries, Jones & Laughlin Steel Corporation, American Rolling Mill Company, National Steel Corporation and certain of its subsidiaries, Inland Steel Company and one of its subsidiaries, and Wheeling Steel Corporation, corporations, individually and as representatives of all of the members of respondent American Iron & Steel Institute.

Pursuant to authority vested in the Federal Trade Commission, *It is ordered*, That Frank Hier, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That an initial hearing in the above matter, for the purpose of securing returns under subpoena duces tecum, begin on Thursday, August 21, 1947, at nine o'clock in the forenoon of that day (eastern standard time), in Room 500, 45 Broadway, New York, New York.

Upon the completion of the taking of testimony and the receipt of evidence in support of the allegations of the complaint, the trial examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondents. The trial examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] WILLIAM L. HAIGH, *Acting Secretary.*

[F. R. Doc. 47-7827; Filed, Aug. 20, 1947; 8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

[S. O. 396, Special Permit 269]

RECONSIGNMENT OF PEACHES AT CHICAGO, ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., August 14, 1947, by Chas. Abbate, of car RD 33302, peaches, now on the Chicago Produce Terminal to Kankakee, Ill.

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 14th day of August 1947.

HOMER C. KING, *Director, Bureau of Service.*

[F. R. Doc. 47-7812; Filed, Aug. 20, 1947; 8:46 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 59-14, 54-19, 54-92]

NEW ENGLAND POWER ASSN. ET AL.

ORDER RELEASING JURISDICTION OVER CERTAIN FEES AND EXPENSES

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 14th day of August, A. D. 1947.

In the matter of New England Power Association, Massachusetts Power and Light Associates, North Boston Lighting Properties, The Rhode Island Public Service Company, Massachusetts Utilities Associates, Common Voting Trust, Massachusetts Utilities Associates, File Nos. 54-92, 59-14, 54-19.

The Commission having by its orders of May 20, 1947 and May 28, 1947 permitted to become effective, pursuant to the provisions of the Public Utility Holding Company Act of 1935, a declaration filed by New England Power Association (the name of which has now been changed to New England Electric System), relating to the issuance and sale of $25,000,000 principal amount of 3% Debentures, due 1967, and $50,000,000 principal amount of 3¼% Debentures, due 1977, but having reserved jurisdiction over all legal fees and expenses, and the fees and expenses of the financial advisers; and Simpson, Thatcher and Bartlett having now filed an application stating that the amount of their legal fees as counsel for the underwriters is $22,500 and that their expenses and disbursements amount to $4,372.64, of which $3,000, being part of the amount disbursed in connection with the qualification of the new Debentures under laws of various states, is to be paid by New England Electric System, and requesting

that jurisdiction over said fees and expenses be released; and it appearing to the Commission that said fees and expenses are not unreasonable, and that jurisdiction over the same should be released:

It is ordered, That the jurisdiction heretofore reserved, insofar as it relates to the said fees and expenses of Simpson, Thatcher and Bartlett be and the same hereby is released.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7803; Filed, Aug. 20, 1947; 8:45 a. m.]

[File Nos. 54-124, 59-79, 70-1197]

SEATTLE GAS CO.

ORDER RELEASING JURISDICTION OVER CERTAIN FEES AND EXPENSES

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 14th day of August A. D. 1947.

The Commission having on hand on January 13, 1947 isued its findings, opinion and order approving an amended plan of recapitalization for Seattle Gas Company pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935, but having reserved jurisdiction over all fees and other compensation in connection therewith; and

Seattle Gas Company having now filed an application requesting the Commission to approve and authorize the payment by the company of the following legal fees:

Drinker, Biddle & Reath	$8,000
Almon Ray Smith	2,500

and

It appearing to the Commission that said fees are not unreasonable and the jurisdiction with respect thereto should be released:

It is ordered, That the jurisdiction heretofore reserved, insofar as it relates to the fees of Drinker, Biddle & Reath and Almon Ray Smith, be and the same hereby is released.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7805; Filed, Aug. 20, 1947; 8:45 a. m.]

[File No. 70-1567]

POTOMAC ELECTRIC POWER CO. AND WASHINGTON RAILWAY AND ELECTRIC CO.

SUPPLEMENTAL ORDER RELEASING JURISDICTION AND PERMITTING APPLICATION-DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Philadelphia, Pa., on the 14th day of August 1947.

Potomac Electric Power Company ("Pepco"), a subsidiary of Washington Railway and Electric Company ("Washington Railway"), a registered holding company, and Washington Railway, having filed a joint application-declaration, and amendments thereto, pursuant to the applicable provisions of the Public Utility Holding Company Act of 1935 and the rules and regulations promulgated thereunder regarding, among other things, the proposed issuance and sale by Pepco under the competitive bidding requirements of Rule U-50 of 140,000 shares of its new __% Preferred Stock (New Preferred Stock) of the par value of $50 per share, subject to an offer, for a period of ten days to the holders of its presently outstanding 5½% Cumulative Preferred Stock, par $100 per share, and 6% Cumulative Preferred Stock, par $100 per share, of the right to such holders to exchange their shares for shares of the New Preferred Stock, on the basis of 2 shares of New Preferred Stock for one share of Old Preferred Stock, plus a cash adjustment. Pepco proposed to invite sealed written bids for services in obtaining exchanges of shares of Old Preferred Stock and for the purchase of such of the 140,000 shares of New Preferred Stock as are not required to effect exchanges.

The Commission having by order dated July 29th, 1947 granted said amended application and permitted said amended declaration to become effective, subject to the following conditions (a) that the proposed issue and sale of the New Preferred Stock shall not be consummated until the results of the competitive bidding have been supplied by a further amendment and a further order shall have been entered in connection therewith and (b) that jurisdiction be reserved over all legal fees and expenses in connection with the proposed transactions; and

Pepco having filed a further amendment to its application-declaration, as amended, in which it is stated that, in accordance with the permission granted by said order of the Commission dated July 29th, 1947, it has offered such New Preferred Stock for sale pursuant to the competitive bidding requirements of Rule U-50 and has received the following bids:

Bidder	Dividend rate	Gross price to company per share [1] (public offering price)	Compensation to bidder per share	Net price to company per share	Annual cost to company
	Percent				*Percent*
Dillon, Read & Co., Inc.	3.60	$51.75	$0.95	$50.80	3.5433
Kidder, Peabody & Co.	3.60	51.50	1.441	50.059	3.5958
Blyth & Co., Inc.-Smith, Barney & Co.	3.70	51.00	.95	50.05	3.6963
The First Boston Corp.	3.75	51.37	1.044	50.326	3.7257
Drexel & Co. & Hemphill, Noyes & Co.	3.80	51.35	1.00	50.35	3.7736

[1] Plus accrued dividends from July 1, 1947.

Said amendment having further set forth that Pepco has accepted the bid of Dillon, Read & Co., Inc., and that it is the present intention of the successful bidder, upon termination of the exchange offer, to offer any unexchanged shares of 3.60% Preferred Stock for sale to the public at an initial price of $51.75 per share to yield 3.478%; and

The Commission having examined the record in the light of said amendment, and finding no basis for imposing terms and conditions with respect to the price to be paid for said 3.60% Preferred Stock, the dividend rate thereon or the bidder's compensation; and

It appearing that the legal fee in the amount of $8,000 and expenses of $350 of the firm of Cahill, Gordon, Zachry & Reindel, New York, as independent counsel for the underwriters and the estimated fees and expenses of Pepco in the amount of $73,770 (excluding $15,000 fee of Sullivan & Cromwell, New York, counsel for Pepco) and of Washington Railway in the amount of $22,712 are for necessary services and are not unreasonable; and it further appearing that the record is not complete with respect to the services performed by Sullivan & Cromwell, New York, counsel for Pepco;

It is ordered, That the jurisdiction heretofore reserved over the price to be paid for the said New Preferred Stock, the dividend rate thereon, and the underwriter's compensation be, and the same is hereby released, and the application-declaration, as further amended, be, and the same hereby is granted and permitted to become effective, respectively, subject to the terms and conditions prescribed by Rule U-24.

It is further ordered, That the jurisdiction heretofore reserved over all legal fees and expenses in connection with the proposed transactions be, and the same hereby is, released, except as to the fee of Sullivan & Cromwell, New York, counsel for Pepco, jurisdiction over which is hereby continued.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7804; Filed, Aug. 20, 1947; 8:45 a. m.]

[File No. 70-1569]

PENN STATE WATER CORP. AND AMERICAN WATER WORKS AND ELECTRIC CO., INC.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 14th day of August A. D. 1947.

Penn State Water Corporation ("Penn State"), an indirect subsidiary of American Water Works and Electric Company, Inc., ("American"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 and certain rules and regulations promulgated thereunder regarding the following transactions:

Penn State proposes to make a capital contribution of $75,000 in cash to its subsidiary, The Dorchester Water Company ("Dorchester"). Penn State owns all of the outstanding common stock of Dorchester, consisting of 1,716.7 shares, no

par value. The proposed capital contribution is to be added by Penn State to its investiment in the common stock of Dorchester and is to be credited by Dorchester to its capital surplus. Dorchester is to use this cash, together with other funds, to carry out a construction program made necessary by increased demands for water service. It is estimated that the total cost of such construction program for the period from May 31, 1947, to December 31, 1947, will be approximately $115,000. It is stated that no expenses are to be incurred in connection with the proposed transactions.

Notice of this filing was duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to the act. The Commission has not received a request for hearing with respect thereto within the period specified in said notice, or otherwise, and has not ordered a hearing thereon.

The Commission finding with respect to this declaration that there is no basis for any adverse findings under the applicable provisions of the act and rules thereunder; deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective; and further deeming it appropriate to grant the request of declarants that this order be effective upon issuance;

It is hereby ordered, Pursuant to said Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed in Rule U-24, that this declaration be, and the same hereby is, permitted to become effective forthwith.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7801; Filed, Aug. 20, 1947; 8:45 a. m.]

[File No. 70-1570]

AMERICAN WATER WORKS AND ELECTRIC CO., INC.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Philadelphia, Pa., on the 14th day of August A. D. 1947.

American Water Works and Electric Company, Inc. ("American"), a registered holding ompany, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 and certain rules and regulations promulgated thereunder regarding the following transactions:

American proposes to make a capital contribution of $250,000 in cash to its subsidiary, South Pittsburgh Water Company ("South Pittsburgh"). American owns 99.93% of the outstanding common stock of South Pittsburgh consisting of 350,000 shares, par value $10.00 per share. The proposed capital contribution is to be added by American to its investment in the common stock of South Pittsburgh and is to be credited by South Pittsburgh to its capital surplus. It is represented that South Pittsburgh is to use this cash, together with other funds, to carry out a proposed construction program made necessary by increased demands for water service. It is represented that the total cost of such construction program during the year 1947 is to be $815,000, of which approximately $550,000 remains to be expended subsequent to May 31, 1947. It is represented that no expenses are to be incurred in connection with the proposed transactions.

Notice of this filing was duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to the act. The Commission has not received a request for a hearing with respect thereto within the period specified in said notice, or otherwise, and has not ordered a hearing thereon.

The Commission finding with respect to this declaration that there is no basis for any adverse findings under the applicable provisions of the act and rules thereunder; deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective; and further deeming it appropriate to grant the request of declarants that this order be effective upon issuance;

It is hereby ordered, Pursuant to said Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed in Rule U-24 that this declaration be, and the same hereby is, permitted to become effective forthwith.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7800; Filed, Aug. 20, 1947; 8:45 a. m.]

[File No. 70-1579]

SOUTHERN NATURAL GAS CO.

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 13th day of August A. D. 1947.

Notice is hereby given that a declaration has been filed with this Commission, pursuant to section 7 of the Public Utility Holding Company Act of 1935, by Southern Natural Gas Company ("Southern Natural"), a registered holding company and a subsidiary of Federal Water and Gas Corporation, also a registered holding company.

Notice is further given that any interested person may, not later than August 28, 1947, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issue of fact or law raised by said declaration which he desires to controvert, or may request that he be notified if the Commission orders a hearing thereon. At any time after August 28, 1947, said declaration, as filed or as further amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under said act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and U-100 thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania.

All interested persons are referred to said declaration, which is on file in the office of the Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Southern Natural proposes the issuance and sale to The Chase National Bank of the City of New York and twelve other banks, pursuant to a loan agreement, of its promissory notes in the aggregate principal amount of $5,000,000 maturing two years from the date of delivery and bearing an interest rate of 1¾% per annum. The proceeds of such loan are to be used for the construction of additions and extensions to Southern Natural's pipe line system.

Declarant has requested that the Commission's order with respect to the declaration issue at the earliest date practicable and become effective upon issuance.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7806; Filed, Aug. 20, 1947; 8:46 a. m.]

[File No. 70-1590]

BROCKTON EDISON CO. ET AL

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Philadelphia, Pa. on the 14th day of August 1947.

In the matter of Brockton Edison Company, Blackstone Valley Gas and Electric Company, Fall River Electric Light Company, Montaup Electric Company, File No. 70-1590.

Notice is hereby given that an application has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by Brockton Edison Company (Brockton), an electric utility company, Blackstone Valley Gas and Electric Company (Blackstone), also an electric utility company, both subsidiaries of Eastern Utilities Associates, a registered holding company, Fall River Electric Light Company (Fall River) an electric utility company and a subsidiary of New England Electric System, also a registered holding company, and Montaup Electric Company (Montaup), an electric (generating) utility company, and a wholly owned subsidiary of Brockton, Blackstone and Fall River. Applicants designate sections 6 (b) and 10 of the act and Rule U-43 as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than September 2, 1947 at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law raised by said application proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter, such application, as filed or as amended, may be granted as provided in Rule U-23 of the rules

and regulations promulgated pursuant to said act, or the Commission may exempt such transaction as provided in Rule U-20 (a) and Rule U-100 thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania.

All interested persons are referred to said application which is on file in the office of the Commission, for a statement of the transactions therein proposed which are summarized below:

Montaup proposes to issue and sell, and Brockton proposes to acquire 3,576 shares of Montaup Common Stock at par ($100 per share) or an aggregate consideration of $357,600. The proceeds thereof will be used by Montaup, together with other funds, for expenditures presently being made for capital additions. Additional funds will come from cash resulting from depreciation charges and certain short-term bank loans to be repaid out of future accruals for depreciation.

A certain existing contract between Brockton, Blackstone and Fall River provides that each of said companies shall keep its respective common stock investment in Montaup equal (as nearly as possible) to its proportionate load demands on Montaup or make an annual payment of 2% on any such deficiency in its respective investment; and that any company with any such deficiency in investment shall, in any new financing, be given the right to make up such deficiency. The proposed acquisition by Brockton of 3,576 shares of Montaup Common Stock is intended to make up such presently existing deficiency.

The application further states that Massachusetts law requires the proposed Montaup Common Stock to be offered pro rata to its present stockholders. To comply with such Massachusetts law, warrants for shares will initially be issued to the following stockholders in the amounts shown: Brockton 770.31 shares, Blackstone 1,598.58 shares and Fall River 1,207.11 shares. Thereafter, it is proposed that Brockton will acquire, without consideration, such warrants which are to be issued to Blackstone and Fall River.

The application states that such transactions have been expressly authorized by the Department of Public Utilities of the Commonwealth of Massachusetts where Montaup and Brockton are organized and doing business.

The applicants request that the Commission's order be issued herein on or before September 5, 1947 and become effective forthwith.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7807; Filed, Aug. 20, 1947; 8:46 a. m.]

[File No. 70-1592]

MONONGAHELA POWER CO.

NOTICE OF FILING AND NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 14th day of August A. D. 1947.

Notice is hereby given that Monongahela Power Company ("Monongahela"), a direct subsidiary of the West Penn Electric Company ("Electric") and West Penn Power Company ("Power"), all three of these companies being subsidiaries of American Water Works and Electric Company, Incorporated ("American"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935.

All interested persons are referred to said document, which is on file in the offices of the Commission, for a statement of the transactions therein proposed which may be summarized as follows:

Monongahela proposes to issue and sell at competitive bidding, pursuant to the provisions of Rule U-50 promulgated under the act, $7,000,000 principal amount of First Mortgage Bonds due 1977 and 40,000 shares of Cumulative Preferred Stock, par value $100 per share. The price and interest rate of the bonds and the price and dividend rate of the preferred stock are to be determined at competitive bidding. The bonds are to be dated September 1, 1947, are to mature on September 1, 1977, interest thereon to be paid semi-annually on March 1 and September 1. The preferred stock dividends are to be cumulative from September 1, 1947, and payable on the first days of February, May, August, and November. The filing indicates that the sale of the bonds and preferred stock are not interdependent, either or both being subject to sale without the sale of the other.

It is represented that the entire proceeds from the sale of the bonds and preferred stock are to be used for necessary extensions, additions and improvements to the properties of Monongahela.

The filing has designated sections 6 and 7 of the act and Rule U-50 as being applicable to the proposed transactions.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held with respect to said matters and that the declaration should not be permitted to become effective except pursuant to further order of this Commission;

It is ordered, That a hearing on said matters under the applicable sections of the act and rules and regulations promulgated thereunder be held at 10: 00 a. m., e. d. s. t., on the 28th day of August 1947, at the offices of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania. On such date the hearing room clerk in Room 318 will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in these proceedings shall file with the Secretary of the Commission on or before August 22, 1947, his request or application therefor as provided by Rule XVII of the Commission's rules of practice.

It is further ordered, That Richard Townsend, or any other officer or officers of the Commission designated by it for that purpose, shall preside at the hearing in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a Trial Examiner under the Commission's rules of practice.

The Public Utilities Division of the Commission having advised the Commission that it has made a preliminary examination of the declaration, upon the basis thereof the following matters and questions are presented for consideration by the Commission without prejudice as to the presentation of additional matters and questions upon further examination:

(1) Whether the securities proposed to be issued and sold by Monongahela are reasonably adapted to the earning power of Monongahela and to the security structure of Monongahela and other companies in the American holding company system, and whether financing by the issue and sale of such securities, in the respective amounts proposed, is necessary or appropriate to the economical and efficient operation of the businesses in which Monongahela is engaged;

(2) Whether the fees, commissions and other remunerations to be paid in connection with the proposed transactions are for necessary services and are reasonable in amount;

(3) Whether the accounting entries proposed to be recorded in connection with the proposed transactions are proper, conform to sound accounting principles and meet the standards of the act and rules and regulations thereunder;

(4) Whether the terms and provisions of the new preferred stock, to be issued and sold by Monongahela meet the applicable standards of the act and are not otherwise detrimental to the public interest or the interests of investors or consumers;

(5) Whether the proposed use by Monongahela of the proceeds from the proposed sale of its securities is appropriate and in conformity with the requirements of the act and the rules and regulations promulgated thereunder;

(6) Generally, whether the proposed transactions are in all respects in the public interest and in the interest of investors and consumers and consistent with all applicable requirements of the act and the rules and regulations thereunder and, if not, whether and what modifications or terms and conditions should be required or imposed to meet the standards of the act.

It is further ordered, That notice of said hearing is hereby given to American, Monongahela, Electric, Power and all interested persons, said notice to be given to American, Monongahela, Electric and Power by registered mail and to all other persons by publication of this notice and order in the FEDERAL REGISTER and by a general release of the Commission distributed to the press and mailed to the persons on the mailing list for releases under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7802; Filed, Aug. 20, 1947; 8:45 a. m.]